



South Carolina House of Representatives

# Legislative Update

David H. Wilkins, Speaker of the House

---

Vol. <sup>12</sup> 11

January 17, 1995

No. 1

## CONTENTS

House Week in Review.....	2
Bills Introduced.....	4

S. C. STATE LIBRARY  
FEB 02 1995  
STATE DOCUMENTS

OFFICE OF RESEARCH

Room 309, Blatt Building, P.O. Box 11867, Columbia, S.C. 29211, ( 803)734-3230

## Legislative Update, January 17, 1995

### House Week in Review

---

Representatives returned to Columbia on Tuesday, January 10, for the convening of the 111th session of the General Assembly. Membership of the House for this session currently consists of 63 Republicans, 57 Democrats and 4 independents. Presiding over the House is a new Speaker, David H. Wilkins, of Greenville, assisted by a new Speaker Pro Tempore, Terry Haskins, also of Greenville. House standing committees also have new chairmen, as follows: Agriculture, Natural Resources and Environmental Affairs: Rep. Charles Sharpe of Aiken County; Education and Public Works: Rep. Ronald Townsend of Anderson County; Judiciary: Rep. James Harrison of Richland County; House Legislative Ethics: Rep. Becky Meacham of York County; Invitations and Memorial Resolutions: Rep. Richard Quinn of Richland County; Labor, Commerce and Industry: Rep. Harry Cato of Greenville County; Medical, Military, Public and Municipal Affairs: Rep. Joe Brown of Richland County; House Operations and Management: Rep. Lewis Vaughn of Greenville County; Rules: Rep. Tom Huff of Aiken County; Ways and Means: Rep. Henry Brown of Berkeley County.

As is customary for the opening week of legislative sessions, a very large number of bills were introduced---approximately 250 in the House. Among the dozens of bills introduced was legislation to enact truth-in-sentencing; limit the length of time families can receive welfare benefits; limit the length of time legislators and/or statewide-elected constitutional officers can serve in office (4 proposals); require the state superintendent of education and adjutant general to be appointed instead of elected; require youth to complete a driver training course before obtaining a driver's license; authorize a state lottery; revoke driver's and professional licenses of persons delinquent in child support payments; and abolish mandatory motor vehicle safety inspections.

On Wednesday, legislators joined other elected officials, judges and other dignitaries in attending the inauguration of South Carolina's 113th governor, David Beasley, of Darlington County. Beasley, who served in the House from 1979 through 1992, replaces two-term Governor Carroll Campbell, who was barred by law from seeking a third consecutive term. House members also witnessed that day the swearing-in of other statewide-elected constitutional officers (lieutenant governor, secretary of state, etc.).

On Thursday, House members received messages from the governor pertaining to measures vetoed during the interim following the 1994 session. Representatives voted to adjourn debate on the vetoed measures until Tuesday, January 17. Also on Thursday, the House made several changes to its rules. Among the rules changes were the following:



### Legislative Update, January 17, 1995

---Allow the Speaker at anytime (unless a member objects) to order the House to stand at ease, to be reconvened at the call of the Chair. (House Rule 8.7);

---Require all meetings of legislative caucuses to be open to the public, pursuant to the Freedom of Information Act (Rule 10.10);

---Allow amendments to be offered when immediate or delayed cloture is in effect (under House Rule 8.6) if the amendment offered is sponsored by at least two-thirds of the entire membership of the House (i.e., a minimum of 83 of the House's 124 members). Previously under House rules, when immediate cloture was invoked on a measure, no further amendments could be offered on the measure, although those amendments on the desk of the clerk at the time of the vote for cloture could be considered. Under delayed cloture, amendments could still be offered for 2 hours following the vote for this, but after the 2-hour period no further amendments could be introduced. (Cloture is invoked to bring debate on a bill to an end and take a vote on the measure; under House rules, when cloture is invoked, the sponsor of an amendment may speak no more than 3 minutes, with opponents also entitled to 3 minutes. Following consideration of amendments, two hours of debate are allowed on the bill, with opponents and proponents each entitled to 1 hour each.)

## Legislative Update, January 17, 1995

### Bills Introduced

---

The following bills were introduced in the House of Representatives during the legislative week of January 10-12. Not all bills introduced this past week are featured here. In most cases, bill summaries are arranged according to the committee to which the legislation was referred, by order of bill number. In those cases where several bills were introduced under the same topic---for example, term limits for legislators (4 measures were introduced on this topic)---bill summaries for all 4 measures can be found by the first bill number addressing the matter, making it easier to compare and contrast the competing proposals on that subject.

### AGRICULTURE, NATURAL RESOURCES AND ENVIRONMENTAL AFFAIRS

Statewide Animal Control (H. 3039, Rep. Scott). This bill represents an effort to enact requirements concerning the behavior, ownership, placement, etc. of domestic animals and to provide penalties for animal owners who fail to abide by these provisions.

Under these provisions, every cat and dog owned by a resident of this state must carry identification (such as a rabies tag or name plate attached to a collar). The bill lists conditions under which identification need not be worn (for example, if the cat or dog is secure within the dwelling or outside fence of the owner, or for show dogs in certain instances) but requires the owner (or agent, where applicable) to have a certificate of the identification available and produced upon request to an animal control officer, rabies control officer, or a law enforcement officer. Animal control officers are permitted to enter public or private property (except buildings designated and used for residential purposes) to enforce the provisions of this legislation. The bill prohibits anyone from opposing or resisting an animal control officer in performance of his duties or from seeking to release an animal in the officer's possession without his consent.

The bill also prohibits anyone from owning or maintaining an animal in a manner so as to allow the animal to become a public nuisance, examples of which include failing to keep the animal restrained (i.e., on owner's confines or on leash while outside the confines); maintaining animals in unsanitary conditions which are dangerous to the animal or to public health; permitting an animal to damage other property or to attack pedestrians and vehicles. A complaint may be filed with an animal control office or designated agency against the owner of an animal violating this section, and an animal control officer must investigate the complaint to determine if there has been a violation. Additionally, no one may



## Legislative Update, January 17, 1995

keep on premises wild or vicious animals for display or exhibition purposes (except for zoos, circuses or performing animal exhibitions) or as a pet unless allowed by federal or state law. Motor vehicle owners or operators may not place an animal in a motor vehicle or allow it to remain unattended there without sufficient ventilation and may not allow animals (except agricultural livestock in vehicles designed for such purpose) to be transported in the back of an open pick-up truck unless secured in an enclosed container.

Guard dog services are required to register all dogs used in their service with the local animal control office, at a cost of \$25 for each dog. Any guard dogs newly acquired by guard dog services must be vaccinated and registered with an animal control officer within 72 hours of acquisition. The bill lists information which must be included in the registration; requires guard dog services to notify the local animal control office of changes in status of their dogs (e.g., death, transfer of ownership, etc.); and list requirements for the secure placement and transport of these dogs.

This legislation allows animal control officers to impound animals whose owners are in violation of these provisions. Impounded animals which are not suffering from or suspected to have an infectious or contagious disease or not injured to an extent to cause unjustifiable pain and suffering must be held at a local animal shelter or designated facility for at least 3 working days (if the animal has no identification) or at least 10 working days (if the animal is wearing identification). Animal control officers must attempt to contact the owners of impounded animals wearing identification, and the animal must be returned to the owner upon proof of current vaccination of his animal (or else the dogs or cats must there be vaccinated at cost to the owner), an impoundment fee of \$20-\$55, a reasonable per diem fee, and other reasonable charges and fines. Animals not claimed within the 3 or 10 day time period must be placed for adoption or disposed of by lethal injection. Impounded animals may not be sold or given for research or experimentation, while dogs and cats placed for adoption must be neutered and vaccinated at the cost of the adopter.

Each county governing body is required to have a differential animal licensing ordinance, providing fees at the ratio of 3 to 1 for un-neutered animals to neutered animals.

Violation of these provisions is a misdemeanor, punishable upon conviction by a fine of between \$50 and \$200, or imprisonment for not more than 30 days, or both. Each day a violation continues is a separate offense.

Free Use of State Park Facilities by Aged, Blind or Disabled Includes No Admission Charges (H. 3061, Rep. Vaughn). Current law allows any South Carolina resident over age 65, or who is disabled or legally blind, to use without charge any facility of a state park (except for campsites, overnight lodging and recreation buildings). This bill specifies that the free use of these facilities also includes no admission charge to any state park.

Voluntary Inspection of Certain Birds by Livestock-Poultry Health Commission (H. 3073, Rep. Kirsh). This bill would allow the Livestock-Poultry



## Legislative Update, January 17, 1995

Health Commission to provide for voluntary inspection programs of families or species of birds for which inspection is not mandated by law (for birds such as ostriches and other ratites). The commission must establish hourly fees for these voluntary inspections to ensure that its direct and indirect costs are reimbursed by the person requesting the inspection. Indirect costs (such as training and preparation of standards and procedures) are to be amortized and included in the fees. Readily ascertainable portions of fees must be collected in advance, unless the inspector is licensed pursuant to the state's meat inspection or poultry products inspection laws. Fees collected from these voluntary inspections must be retained by the commission for use in carrying out these provisions.

### Safety Requirements for Water Skiers and Surfboarders (H. 3116, Rep. Cato).

Current law prohibits anyone from water skiing or riding on a surfboard or similar object unless he is wearing a ski belt, life preserver or similar equipment. This bill changes the reference of "surfboard" to "kneeboard" and prohibits anyone from water skiing or riding on this device if he is being towed by a motorized watercraft and unless he is wearing a certain type of U.S. Coast Guard-approved flotation device of proper size and which is in good and serviceable condition. The bill also exempts surfboarders from this personal flotation requirement.

### No Hunting within Certain Distance of Roadways (H. 3125, Rep. Waldrop).

This bill would make it a misdemeanor (punishable by a fine not exceeding \$200 or imprisonment not exceeding 30 days) for anyone to hunt within 300 yards of the edge of a through state primary roadway.

Golf Week (H. 3143, Rep. D. Smith). This bill designates the last week in April as "Golf Week" in South Carolina, with the governor required to issue appropriate proclamations to commemorate this week and to be observed throughout the state to recognize the economic impact of the golf industry in this state, the importance of the state's junior golfers, and the importance of turfgrass research.

Increased Penalties for Hunting, Fishing and Trapping Illegally on Another's Land (H. 3196, Rep. Kirsh). This bill increases the fines which may be imposed on persons who hunt, fish or trap or enter land for such purposes without the permission of the owner or manager of the land, as follows:

First Offense: Maximum fine increases from \$200 to \$500;

Second Offense: Fine range of \$100-\$200 increases to \$500-\$750;

Third or Subsequent Offense: Fine range of \$500-\$1,000 increases to fine of at least \$1,000.

The current maximum imprisonment which may be imposed for violation of these provisions (30 days for first or second offense, 6 months for a third or subsequent offense), remain unchanged under this legislation.

Licenses to Hunt and Fish May Be Issued to Certain Residents of Georgia without Charge (H. 3197, Rep. Richardson). Current law allows anyone age 65 or older who has lived in South Carolina for at least 1 year to obtain without charge a license to hunt and fish in this state. This bill also would allow a resident of Georgia age 65 or older who has been issued a valid lifetime honorary



## Legislative Update, January 17, 1995

hunting license by his state to obtain a free license to hunt and fish in South Carolina, upon presentation of the Georgia license to an enforcement officer.

**South Carolina Commission on Sporting Dogs and Field Trials** (H. 3199, Rep. Koon). This joint resolution establishes the South Carolina Commission on Sporting Dogs and Field Trials. This commission must assess the economic, environmental and recreational impact on South Carolina for developing field trial facilities and to develop a state plan for providing the facilities. The commission consists of 7 members, appointed by the governor, who represent various beagle, houndsmen and similar organizations in the state. The member with field trial knowledge and experience serves as the commission chairman. Commission members are not entitled to per diem, mileage or subsistence. The bill also provides for a nonadvisory committee to the commission, to provide information and staff assistance to the commission. The Speaker of the House, President of the Senate and chair of the State Wildlife and Marine Resources Commission serve as ex-officio members of this committee, while the chairman of the House Agriculture, Natural Resources and Environmental Affairs Committee and the chairman of the Senate Agriculture and Natural Resources Committee each must appoint 1 member to this advisory committee. The Commission must submit its findings and state plan to the Governor, the Senate Agriculture and Natural Resources Committee and the House Agriculture, Natural Resources and Environmental Affairs Committee by January 1, 1997, at which time the commission terminates (unless extended by the General Assembly).

**Revisions to Clean Indoor Air Act** (H. 3201, Rep. Simrill). Current law prohibits smoking in public schools (including preschools) except in enclosed private offices and teacher lounges and also prohibits smoking in most government buildings except in private offices and designated areas of employee break areas. This bill provides, however, that nothing in the Clean Indoor Air Act prohibits a local school board from making any school district facility smoke free and further provides that a governmental entity need not allow smoking in those areas currently permitted under the Act if the entity has a nonsmoking policy in effect that is stricter than current requirements and that was in effect before August 1, 1990.

**Establishment of Agricultural Heritage Preservation Program** (H. 3219, Rep. Harvin). This bill requires the State Department of Archives and History to establish an Agricultural Heritage Preservation Program, for the purpose of increasing awareness of the importance of the state's historic agricultural buildings and encouraging their preservation through an audio-visual presentation and an awards program. Working with other agencies and organizations, the department must research and produce an audio-visual presentation on South Carolina's vanishing farm sites and make this presentation available to historical societies and other organizations across the state. The legislation also requires development of an awards program to honor and publicize farmers who have successfully preserved historic farm buildings.

This program is to be funded through appropriations made by the General Assembly. The Department also must develop a grants proposal for the program to assist citizens in preserving historic agricultural buildings. Matching grants



## Legislative Update, January 17, 1995

and technical assistance is to be awarded on a competitive basis to restore these buildings according to historic preservation standards of the U.S. Secretary of Interior.

### EDUCATION AND PUBLIC WORKS

Aeronautics Division of Department of Commerce To Have Authority over all Passenger Aircraft Owned by State (H. 3011, Rep. Cromer). This bill grants to the Aeronautics Division of the Department of Commerce authority (including supervision and control, prescription of rules and regulations) over all aircraft owned, operated and maintained by the State, its departments and agencies. The Division also must conduct a study which examines the feasibility and potential cost savings of providing shuttle flights in state-owned aircraft to frequently-traveled destinations, with findings to be reported to the General Assembly through the House Ways and Means and Senate Finance Committees by January 1, 1996. Finally, the Division must reduce by 3 the number of state-owned aircraft immediately upon acquisition of jurisdiction over these aircraft under these provisions.

School Buses Must Be Equipped with Lap or Shoulder Safety Belts (H. 3014, Rep. J. Brown). This bill requires every school bus to be equipped with lap or shoulder harness safety belts, for use by every person riding the bus.

Higher Fees for Vehicle Safety Inspections (H. 3015, Rep. J. Brown). Under current law, the maximum charge for a motor vehicle safety inspection is \$3.00, of which \$2.50 goes to the inspection station and 50 cents is for issuance of the inspection certificate. If this bill is passed, however, the maximum charge will increase to \$6.00, of which \$5.50 would go to the inspection station, while the 50 cent charge for a inspection certificate would remain the same.

Street Lighting Systems in Rural Areas (H. 3016, Rep. Byrd). This bill requires the Department of Transportation, when requested by a local governing body, to provide for a street lighting system in rural areas represented by the local governing body where a system is needed for traffic safety and for the safety and security of residents and their property. The local governing body must determine where such a system is needed.

Vehicles Leased by Persons Age 65 or Older May Be Registered for \$10 Annually (H. 3051, Rep. Vaughn). Current law provides for a \$20 biennial registration fee for every private passenger-carrying vehicle owned by persons age 65 or older or who are handicapped. If this bill is adopted, the \$20 registration fee would also apply to every such vehicle which is leased by the elderly or handicapped.

School District May Grant Foreign Language Credit for Courses in American Sign Language (H. 3055, Rep. Kirsh). This bill would allow a school district board of trustees to grant foreign language credit to a pupil who satisfactorily completes a high school course in American sign language.



## Legislative Update, January 17, 1995

State Department of Education to Develop a Parental Involvement Program for Elementary and Secondary Schools (H. 3063, Rep. Byrd). This bill requires the State Department of Education to develop a parental involvement program for use in the state's elementary and secondary schools. This program is designed to improve parental participation in their child's school progress, increase communication and provide greater accountability between the parent, school and child, and lessen the chances that a parent will only have an opportunity to react to a problem involving their child after it has occurred. At a minimum, this program must include visitation at least twice a semester by parents to their child's school; arrangement of school discharge times to the extent possible to be compatible with parents who work; involve parents, teachers and administrators in school training sessions (with these sessions addressing such matters as the importance of homework, discipline problems and taking of standardized tests); preparation of written conference cards annually that identify the date, time and response of parent/teacher conferences; and an assessment and evaluation of a child's progress, provided to the parent at the end of each semester and recommendations for improvement.

This program is to be pilot-tested in the 3rd and 6th grades of selected school districts during the 1995-1996 school year. The program is to be implemented in all elementary and secondary schools of South Carolina beginning with the 1996-1997 school year, after such modifications as considered necessary by the Department of Education.

Private School Buses Must Meet Same Equipment and Safety Standards as Public School Buses (H. 3064, Rep. Byrd). This bill requires private school buses to have the same equipment and meet the same safety standards as are required for school buses operated by the public schools.

Basic Skills Examination May Be Taken More than Three Times (H. 3066, Rep. Byrd). Current law permits a student to take the Basic Skills Examination a maximum of 3 times. (Successful completion of this exam is a prerequisite for final admittance into an undergraduate teacher education program.) This bill, however, would allow students who make three unsuccessful attempts to pass this exam but are within 1 point of the required number of points in writing, and within 10 points of the required number of points in math and reading, to be given a 4th attempt to pass the exam upon the institution's verification of the student's involvement in remediation activities. After the 3rd and 4th attempts, those students within 2 points in reading and math must be granted additional attempts. The bill also prohibits a student who has not passed the exam from engaging in student teaching unless he has achieved the scores as provided hereforth for retaking the exam.

Students with Disabilities Prohibited in Traditional Public School Classrooms (H. 3070, Rep. Davenport). This bill prohibits students with disabilities (i.e., students who are mentally or physically impaired) from being included in traditional public school classrooms with other students unless mandated by a federal court or a federal agency pursuant to federal law. If mandated, inclusion may not be implemented unless several conditions are met (as examples, full federal funding is budgeted and available for implementation of



### Legislative Update, January 17, 1995

the inclusion plan and guidelines for an inclusion plan for school districts are approved by the General Assembly by concurrent resolution).

**Qualifications for Issuance of Motor Vehicle Dealer Plates** (H. 3111, Rep. Kirsh). Current law allows a motor vehicle dealer to be issued 2 dealer plates for the first 20 sold during the preceding year and 1 additional plate for every 15 vehicles sold beyond the initial 20 during the preceding year. This bill would revise the number of dealer plates issued so that dealers more plates than currently permitted by law, as follows:

<u>Vehicles Sold in Previous 12 months</u>	<u>Maximum Number of Dealer Plates Issued</u>
Fewer than 12	1 (one)
12-24	4 (four)
25-36	5 (five)
37-48	6 (six)
49 or more	At least 6, but not more than 4 times the average number of qualifying sales representatives employed by the dealer during the relevant 12 month period.

**Religious Rights Public School Students May Exercise** (H. 3113, Rep. Davenport). This bill lists religious rights a student in public schools may exercise. As examples, under this legislation, a public school student may meet with other students for prayer, Bible study and worship; hand out religious tracts on campus; bring a Bible to school; and have religious clubs on campus. In exercising these rights, however, a student may not interfere with the school's normal day-to-day operations or activities. A public school employee who knowingly prevents or interferes with a student from exercising these religious rights must receive a written reprimand upon first violation and must be immediately terminated upon a second or subsequent violation.

**Mandatory Driver Training Course** (H. 3124, Rep. Cromer). This bill would require any 15 or 16-year-old seeking a driver's license to first complete a mandatory driver education course (or "approved driver training course"). The cost of taking the course would be covered by obtaining a voucher from the Department of Insurance, with the voucher funded through \$3.00 of the annual premium for uninsured motorist coverage of every liability insurance policy issued in South Carolina. If sufficient funds are not collected to pay the cost of the voucher system in any 1 year, then the program may be suspended temporarily until sufficient funds have accumulated to administer the voucher program. Every 15 or 16-year-old completing the course is entitled to the youthful driver training insurance credit.

For purposes of meeting this driver education requirement, an "approved driver training course" is one approved by the State Department of Education, the

## Legislative Update, January 17, 1995

Department of Public Safety, or another responsible educational agency and which was conducted by: (1) a recognized secondary school, college or university; (2) instructors certified by the State Department of Education, Department of Public Safety or other responsible educational agency; or (3) any other school approved and supervised by these state departments or other responsible educational agency. Course requirements must include either 8 hours of classroom instruction (for commercial driver training school approved courses) or 30 hours of classroom instruction (for a public or private secondary school course); 6 hours of on-street practice driving; instruction on the effects of drugs and alcohol on operation of a motor vehicle; and a relevant test on the course material. If the youth takes the driver training course but does not successfully complete it, he must be given one chance to makeup the course at no cost to him.

If a 15 or 16-year-old with a driver's license from another state becomes a South Carolina resident but has not completed a driver training course in his previous state of residence, he may be granted a temporary driver's license to allow him to operate a motor vehicle in order to complete the driver training course necessary to obtain a driver's license in this state.

Old Charleston Scenic Highway (H. 3144, Rep. Neilson). This bill would designate a 9-mile stretch of South Carolina Highway 35 in Darlington County (known as Old Charleston Road) as a scenic highway, to be known as the "Old Charleston Scenic Highway." All off-premises outdoor advertising would be prohibited on this scenic highway after the effective date of this legislation, with any off-premises signs in existence on the effective date required to be removed within 5 years thereafter. The bill also would prohibit any trees in excess of a 6-inch caliper located within this highway's right-of-way from being removed without the permission of the Department of Highways and Public Transportation, upon the recommendation of Darlington County's governing council.

Designation of Building at Florence-Darlington Technical College as "John M. Paxton Building" (H. 3145, Rep. Harwell). This joint resolution would name the building which houses the automotive classes at Florence-Darlington Technical College as the "John M. Paxton Building". (Mr. Paxton was a businessman who served as a member of the Florence-Darlington County Commission on Technical Education from 1966 to 1985.)

Motor Vehicle Dealer Must Obtain Permission of Vehicle Purchaser Before Affixing Dealer's Name or Logo to Vehicle (H. 3146, Rep. Inabinett). This bill requires a dealer who sells a motor vehicle to a person to obtain the purchaser's permission before affixing the dealer's name or logo to that vehicle.

Membership of Board of Commissioners of School for Deaf and Blind To Include Member Representing Interests of Persons with Multiple Handicaps (H. 3148, Rep. Davenport). This bill increases from 9 to 10 the size of the board of commissioners of the South Carolina School for the Deaf and Blind, with the additional member representing the interests of persons with multiple handicaps. This additional member would be an at-large appointment. The bill further revises the at-large membership to mandate that only 1 member must be deaf and 1 must be



## Legislative Update, January 17, 1995

blind (current law requires at least 1 member to be blind and at least 1 member to be deaf).

Lawn and Garden Tractors and Construction Equipment No Longer Exempt from Vehicle Registration and Licensing Requirements (H. 3151, Rep. Inabinett). This legislation subjects lawn and garden tractors, along with construction equipment, to the state's vehicle registration and licensing requirements. The title and registration fee for lawn and garden tractors and construction equipment is \$10, assessed each time the vehicle is transferred from one individual to another. The bill also exempts owners of lawn and garden tractors and construction equipment which are transferred from a previous owner from completing the odometer disclosure statement required of other types of vehicles for which registration and licensing are sought after a transfer of vehicle ownership.

Administration Building at Florence-Darlington Technical College To Be Named "Fred C. Fore Building" (H. 3155, Rep. Harwell). This joint resolution would name the 1,000 Administration Building at Florence-Darlington Technical College as the "Fred C. Fore Building." (Dr. Fore was the founding president of Florence-Darlington Technical College and served in that position from 1963 to 1988.)

Public Schools Must Set Aside Time for Voluntary Silent Prayer (H. 3173, Rep. Meacham). This bill requires the state's public elementary and secondary schools to set aside at the beginning of each school day a one-minute period to allow for voluntary silent prayer, in which students may participate on a voluntary basis. The legislation, however, does not authorize a teacher or student to advocate or promote a particular religious viewpoint.

Motorcycle Safety (H. 3174, Rep. P. Harris). This bill authorizes the State Board for Technical and Comprehensive Education to establish a Motorcycle Safety education program (replacing the current inspection program). This program must offer motorcycle rider training courses designed to develop and instill knowledge, attitudes, habits and skills necessary for operating a motorcycle. Courses must be taught by instructors approved by the Board and must include hands-on instruction for novices. Any South Carolina resident holding a valid drivers' license for any classification or who is eligible to hold a motorcycle learners permit can enroll in the rider training courses. The Board must issue certificates of completion to persons who successfully complete this motorcycle rider training course. The contents of the course must meet or exceed national standards for motorcycle rider training courses as prescribed by the Motorcycle Safety Foundation.

The bill also requires the Board to approve instructors for the motorcycle training courses and requires the program to offer an instructor training course. The bill lists requirements (such as age and education level) which are necessary to become an instructor.

This legislation also creates a South Carolina Motorcycle Safety Education Program, to be administered by the Board. This program is to be funded from any voluntary contributions and increases in fees for motorcycle registration,



## Legislative Update, January 17, 1995

motorcycle learners' permits and original or renewed beginner's permits. The executive director must establish a program advisory committee, consisting of 5 members representing various interests in motorcycle safety, to assist in developing, establishing and maintaining the motorcycle safety education program.

Schools to Provide Minute of Mandatory Silence (H. 3178, Rep. Meacham). This bill requires schools to provide for 1 minute of mandatory silence at the beginning of each school day.

Signs Identifying Handicapped Parking Places Must Include Penalties for Unlawful Use of Place (H. 3198, Rep. Richardson). This bill requires every sign identifying a handicapped parking place which is erected after June 30, 1995 to include a statement of the penalties for unlawful use of a handicapped parking space.

Persons Elected to School District Board of Trustees or Appointed or Elected to County Board of Education Required to Complete Orientation Program (H. 3203, Rep. Stuart). This bill requires anyone elected for the first time to a school district board of trustees or appointed or elected to a county board of education after July 1, 1995 to complete an orientation on the powers, duties and responsibilities of a board member (e.g., policy development, district finance). The orientation must be completed within 1 year of taking office. The orientation is to be approved by the State Board of Education and conducted by public or private entities approved by the State Board. The bill requires the State Department of Education to reimburse any school district or county board of education conducting an orientation for a new board member at a rate of \$80 per member, provided that total reimbursements by the Department in a fiscal year do not exceed \$10,000. If the total projected cost of these reimbursements for any year exceeds \$10,000, then the \$80 reimbursement per new member must be reduced proportionately. The State Board of Education must establish guidelines and procedures for these reimbursements.

Mandatory Helmet Law Applies to Persons of All Ages (H. 3209, Rep. P. Harris). Current law requires anyone under age 21 to wear a protective helmet when riding a two-wheeled motorized vehicle. If this legislation is adopted, however, this helmet requirement would apply to persons of any age (whether under 21 or 21 and over) riding such vehicles.

Extended School Year Program for Children with Disabilities (H. 3211, Rep. P. Harris). This bill requires an extended school year program for children with disabilities to be established in each school district. The extended school year program consists of an individualized instructional program, related service, or both, which is extended beyond the normal 180-day school year for students with disabilities who are enrolled in special education. The purpose of extended school year services is to ensure that the child derives meaningful educational benefit, forestalls serious regression of previously-learned skills, or both. This program is designed to maintain each student's mastered competencies in critical needs areas as determined by the pupil's individual educational plan committee, so that a summer break period does not render the previous year's program of no meaningful effort.



## **Legislative Update, January 17, 1995**

All children with disabilities must be screened for potential eligibility for extended school year services. Decisions as to which children qualify for the services and the amount and kind of programming must be determined on an individual basis. The bill lists the procedures which must be followed in reviewing referrals and determining eligibility for extended school year services.

The bill also requires a student's individual educational plan committee to develop an addendum to the individual educational plan which specifies extended school year services. The bill lists provisions which must be included in the addendum. Additionally, a multidisciplinary evaluation team must assess a student's progress to determine whether the extended break has caused or may cause the loss of progress toward critical skills and objectives. This team must forward written recommendations, along with a copy of the current individual educational plan, to the designated district administrator.

These provisions permit a parent or guardian to refuse to allow their child to participate in the extended school year program without the need for a due process hearing and provides that if necessary, transportation to and from the extended school year program must be provided at no cost to the participants.

**Repeal of Mandatory Vehicle Safety Inspections** (H. 3213, Rep. Spearman). This bill would repeal the state's mandatory vehicle inspection law, under which motor vehicles are required each year to undergo a safety inspection. (This legislation passed the House during the 1994 session but died on the floor of the Senate at the end of last year's session.)

**Issuance of Dealer Plates for Dealers Who Sell Vehicles Modified for Use by the Handicapped** (H. 3215, Rep. D. Smith). This bill authorizes the issuance of a minimum of 2 dealer plates, at a cost of \$20 each, to a licensed motor vehicle dealer in the business of selling motor vehicles which he (the dealer) has modified for use by handicapped persons. This authorization applies regardless of the number of sales by the dealer.

**Rights of Parents to Participate in Their Children's School Activities** (H. 3228, Rep. Neilson). This bill provides that both custodial and noncustodial parents of a child have the same right to participate in their children's school activities.

**Full-Day Kindergarten Programs** (H. 3239, Rep. Anderson). Current law requires the board of trustees of each school district to establish and provide kindergartens for children within the district. This bill would require the 5-year-old kindergarten program in each school district to be a full-day program, beginning with school year 1995-1996. This program must have at least the same hours of operation as required by law for elementary schools (currently a daily minimum of 6 hours, including lunch).

**Causes of Action Against Federal Agencies Which Require Inclusion of Handicapped Students in Traditional School Classes** (H. 3250, Rep. Davenport). This bill provides that a party aggrieved as a result of "inclusion" (here



## Legislative Update, January 17, 1995

defined as the process by which students with disabilities are included in traditional public school classrooms with other students) has a cause of action against the federal agency mandating inclusion, and not against the State.

### JUDICIARY

Life without Parole Sentence Mandatory Upon Third Conviction for "Most Serious Offense" (H. 3004, Rep. Cromer). This is a "skeleton bill" which would provide for a mandatory sentence of life imprisonment without parole upon a third conviction for a "most serious offense."

Persons Under Certain Age Prohibited from Riding in Open Areas of Pickup Trucks (H. 3005, Rep. Cromer; H. 3012, Rep. J. Brown).

Two bills were introduced the week of January 10-12 which would restrict persons under a certain age, except in limited circumstances, from riding in the open bed of a pickup truck or trailer. Summaries of these two bills are as follows:

H. 3005 prohibits anyone under age 15 from standing or sitting in the open bed of a pickup truck or trailer when the vehicle is traveling more than 25 m.p.h. on a public road or highway. The operator of a motor vehicle who permits the person under age 15 to ride in the open bed of the vehicle is guilty of a misdemeanor and upon conviction must be fined not more than \$2,500, or imprisoned not more than 30 days, or both. This prohibition, however, does not apply to persons riding in organized hay rides or parades.

H. 3012 prohibits anyone under age 12, except under limited circumstances (to be listed shortly) from being transported in the open bed or open cargo area of a pickup truck or trailer. A person violating this prohibition is guilty of a misdemeanor, punishable upon conviction by a fine of \$25; however, no driver's license points or insurance surcharge may be assessed for this violation. The prohibition contained in this bill, however, does not apply when (1) an adult is present in the bed of cargo area of the vehicle and is supervising the child; (2) the child is secured or restrained by a seat belt of certain specifications; (3) an emergency situation exists; (4) the vehicle is being operated in an organized hay ride or parade pursuant to a valid permit; (5) the vehicle is being operated in an agricultural enterprise; or (6) the vehicle is being operated in a county which has no incorporated area of more than 3,500 residents.

Riverboat Gambling (H. 3007, Rep. Scott). This is a "skeleton bill" which would serve as the implementing legislation for the establishment of riverboat gambling in South Carolina. This legislation would be effective only if a constitutional amendment to allow riverboat gambling in South Carolina (summarized below in H. 3008) is adopted.

Riverboat Gambling and Gambling Commission (H. 3008, Rep. Scott). This joint resolution proposes to amend the Constitution to (1) allow the General



## Legislative Update, January 17, 1995

Assembly to provide for the establishment, administration and regulation of riverboat gambling and (2) establish a South Carolina Gambling Commission for the purpose of regulating gambling. The joint resolution also prohibits the General Assembly from authorizing gambling unless it is state-operated gambling. If adopted by the General Assembly (requires two-thirds approval of the elected members of both the House and the Senate), this proposed constitutional amendment would be submitted to the voters at the November 1996 general election.

Size of Judicial Circuits for Purpose of Electing Solicitors (H. 3009, Rep. Scott). Currently in South Carolina there are 16 judicial circuits, with wide variations in the population of each circuit (the smallest one, based on 1990 U.S. Census figures, contains 109,000 residents, with the largest one containing nearly 424,000 residents). If this legislation is adopted, however, the population of each judicial circuit, for purposes of electing solicitors, may not have a variance of more than 10 percent.

Filling of Vacancies of Local Elected Offices (H. 3010, Rep. Scott). This bill requires any vacancy occurring in a local office in a county which elects its local officers to be filled for the remainder of the unexpired term by appointment of the governor, upon recommendation of a majority of members of the local legislative delegation representing that county.

AFDC Recipients Must Repay Benefits Received (H. 3013, Rep. Hutson). This bill would require recipients of AFDC (Aid to Families with Dependent Children) benefits to repay to the State the benefits received beginning 18 months after the last benefit is received. A temporary waiver from this requirement must be granted if the recipient's income is not 125 percent or more of the federal poverty level or if there are extenuating circumstances which would place an undue hardship on the former recipient. If a temporary waiver is granted, the Department of Social Services may modify the amounts or terms of payment and must review the matter three months after the waiver is granted and every three months thereafter so long as the waiver is in effect. DSS also is authorized to employ legal means necessary to ensure collection of these repayments. Payments received pursuant to this legislation are to be remitted to the State's general fund, to be used for providing early intervention services for children and their families who are at risk for being AFDC recipients. This repayment requirement applies to recipients who apply, reapply or are reinstated for AFDC benefits on or after the effective date of this legislation, and applies only to benefits paid on or after this effective date.

Physical Abuse, Sexual Abuse and Other Factors May Not Be Used as Defense in Criminal Proceedings (H. 3017, Rep. Davenport). This bill prohibits physical abuse, sexual abuse, mental abuse, race and sexual orientation from being used as a defense in a criminal proceeding.

Instructions for Jurors in Rendering Verdicts in Murder Cases (H. 3018, Rep. Simrill). This bill requires a trial judge in a murder trial to explain to the jury impaneled to render a verdict that a defendant receiving a sentence of life imprisonment is eligible for parole after serving either 20 or 30 years, depending on the circumstances of the case. (Under current South Carolina law,



## Legislative Update, January 17, 1995

a person convicted of murder but not sentenced to death must be sentenced to life imprisonment, with eligibility for parole after 20 years' service; however, if a person is convicted of murder and an aggravating case is found (e.g., murder was committed during an armed robbery, drug trafficking, etc.), he must be sentenced (if the death penalty is not imposed) to life imprisonment with parole eligibility after 30 years' service.)

Increased Penalties for Unlawful Alteration/Use of Driver's License or Identification Card (H. 3019, Rep. Simrill). This bill changes the fine which may be imposed on a person convicted of unlawful alteration of a driver's license or of selling or issuing a fictitious driver's license. Under current law, the maximum fine for this violation is \$2,500, but if this bill passes the range of fines imposed would vary from not less than \$1,000 to not more than \$3,500. Additionally, the current maximum fine of \$100 which may be imposed on a person convicted of unlawful use of a driver's license or identification card would increase to a fine of between \$250 and \$1,000.

Threats against Public or School Officials (H. 3020, Rep. Vaughn). Current South Carolina law prohibits (with punishment upon conviction not to exceed 5 years' imprisonment) anyone from threatening to take the life of or inflicting bodily harm upon a public official, teacher, principal, or members of their immediate families. This bill specifies that for purposes of enforcing this law, a threat made against the public official, teacher, principal or their immediate families must arise out of or be in connection with the performance or nonperformance of official duties and not any private or personal business with the public official, teacher or principal.

State Lottery (H. 3021, Rep. Scott). This joint resolution is a proposed constitutional amendment to authorize a state lottery. Under this proposal, revenues from a state lottery would be paid into a state lottery fund, to be invested by the State Treasurer, with interest earned remaining a part of the fund. No more than 15 percent of the lottery's revenues could be used for its (the lottery's) operational expenses; 50 percent of revenues would be expended as prizes, while remaining revenues each year must be used for nonrecurring expenses for public education (including public higher education), health care, water and sewer infrastructure, other capital improvements, the reduction of bonded indebtedness, or for any combination of these purposes as provided by law by the General Assembly. If the General Assembly approves this joint resolution (requires two-thirds approval of the elected members of each body), then the proposal would be submitted to the voters for approval in the November 1996 general election.

Families May Not Receive AFDC Benefits for Longer than 36 Months (H. 3025, Rep. Cromer). This joint resolution directs the Department of Social Services to apply for a federal waiver to prohibit any family from receiving AFDC (Aid to Families with Dependent Children) benefits for more than 36 months unless the head of household is (1) permanently or totally disabled (whether physical or mental); (2) unable to obtain employment in the private sector because no job for which the person is qualified is available (but the person is working 40 hours a week in a volunteer public sector community placement); (3) providing full time



## Legislative Update, January 17, 1995

care to a disabled dependent in the home; or (4) unemployed because Work Support services (such as transportation or child care) are not available to assist the person in becoming self-sufficient. This 36-month cutoff is effective July 1, 1995, applying to families who apply for AFDC benefits on or after that date and upon recertification to families receiving or who have been determined eligible to receive AFDC benefits as of July 1, 1995. This joint resolution also directs the Department of Social Services, using funds appropriated in the 1995-1996 General Appropriations Act for the DSS JOBS program, to contract with the Budget and Control Board to conduct a study to determine the savings in state funds that would be realized by limiting AFDC benefits to 36 months. Any savings realized from this limitation must be appropriated to DSS to expand and enhance its JOBS program.

Members of State Boards and Commissions with 3 Consecutive Unexcused Absences Subject to Removal from Office (H. 3026, Rep. Meacham). This bill provides that a member of a state board, council, commission or committee who has three consecutive unexcused absences from meetings of his board, commission or committee is considered removed from his particular office, with a vacancy thus created. It would be up to each board, council, commission or committee to define "unexcused absence" in rules governing its own operation. These provisions would not apply to an ex-officio member, or his designee, of a state board, council, commission or committee.

Definition of "Public Official" under Ethics Act Includes Members of Judiciary (H. 3028, Rep. Vaughn). Currently under the state's Ethics Act, except for probate judges (for purposes of campaign practices, campaign disclosure and disclosure of economic interests), a member of the judiciary is not defined as a "public official" and thus is not subject to the requirements of that act. If this bill is approved, however, the definition of "public official" under the Ethics Act would be expanded to include all members of the judiciary, thus subjecting them to the act's requirements.

Age to Qualify for Voting by Absentee Ballot Lowered from 72 to 65 (H. 3033, Rep. Simrill). This bill lowers from 72 to 65 the age for which a person qualifies (for reasons of age) to vote by absentee ballot.

Restrictions on Issuance of Personal Recognizance Bond (H. 3036, Rep. Scott). This bill provides that a personal recognizance bond may only be issued for a person charged with the first offense of a noncapital offense and only once within a 12-month period. The bill also adds an additional circumstance under which a bail bondsman may seek a commitment order for the defendant, so that the bondsman may seek commitment if the defendant has previously violated the specific terms of the bail bond. Furthermore, as pertains to remission of judgment of forfeiture, if the surety surrenders the principal within 6 months of an order of forfeiture, then the whole amount of the judgment may be refunded to the surety; however, if the surety surrenders the judgment within 12 months of that order, then the surety may be refunded one-half the judgment amount. Finally, this bill amends current provisions pertaining to the prohibition against a bail bondsman or runner soliciting business in courts and other places,



### Legislative Update, January 17, 1995

to allow a bail bondsman or runner to attend any court proceeding pursuant to or directly affecting his business or person he represents.

**Offense of Child Endangerment** (H. 3037, Rep. Kirsh). This bill creates the offense of child endangerment. Under these provisions, a person is guilty of this offense if he (1) is operating a motor vehicle while under the influence of alcohol or drugs or causes great bodily injury or death while under the influence of these substances, and (2) a minor is a passenger in the vehicle when the violation occurred. Upon conviction, the driver must be punished in one of the 3 following manners:

(a) Mandatory fine of at least one-half the maximum fine permitted for committing DUI or causing great bodily injury or death while DUI (if fined for that offense);

(b) Mandatory imprisonment of not less than one-half the maximum imprisonment imposed for committing DUI or causing great bodily injury while DUI (if imprisoned for that offense); or

(c) Both mandatory fine and imprisonment equal to one-half the maximum fine/imprisonment imposed when the person is fined and imprisoned for the DUI offenses listed above.

Penalties assessed for the crime of child endangerment may not be suspended or revoked, nor may probation be awarded, and a person may be convicted for child endangerment in addition to being convicted for the DUI offenses as listed above.

**Misuse of Public Funds, Employees or Property** (H. 3044, Rep. Kirsh). This bill makes it a misdemeanor (punishable by fine not exceeding \$5,000, or imprisonment not exceeding 5 years, or both) for a person who, with intent to defraud a public body, uses or authorizes the use of public funds, employees, material, equipment, services or other public property valued at more than \$200 for private use or benefit. For purposes of this offense, "public body" includes not only any public or governmental body or political subdivision of South Carolina, but also such entities as organizations, corporations or agencies supported (whether in whole or in part) by public funds or expending public funds and any State quasi-governmental body and its political subdivisions (for example, the South Carolina Public Service Authority).

**Early Voting** (H. 3047, Rep. McElveen). This bill would allow any person registered to vote in South Carolina to vote early in statewide general elections and in their nominating primaries by physical appearance at a particular county office. In order to vote early by this procedure, a person must apply in person at the county board of registration, or an extension office of the board as established by the county governing body, at the time the applicant desires to vote. The office of the county board of registration and (if applicable) its extension office would serve as the only early voting precincts in the county. Notice of the time and place for early voting must be published in a newspaper of general circulation in the county.

Under these provisions, the period for early voting by personal appearance begins on the 20th day prior to election day and continues through 5 pm on the day immediately preceding election day; however, this early voting period begins on the 10th day before the election in cases of runoff elections. If it is not



## Legislative Update, January 17, 1995

possible to begin early voting by personal appearance on the prescribed date (because of the date for which an election is ordered), then the early voting period is to begin on the earliest date practicable after the prescribed date, as set by the authority ordering the election. Early voting by personal appearance must be conducted on the weekdays of the early voting period, during hours that the county board of registration normally is open for business and on the last 2 Saturdays before the statewide election day or their nominating primaries between 9 am and 5 pm.

Uniform Custodial Trust Act (H. 3052, Rep. Kirsh). This bill provides for the creation of a statutory custodial trust for adults when property is delivered to another as a custodial trustee. The bill specifies how a custodial trust of property may be created and requires a custodial trustee (if appropriate) to register or record the instrument vesting title to custodial property. The bill also provides for transfer of unexpended custodial trust property upon termination of a custodial trust and lists methods of transferring or evidencing ownership of property which may be used to create a custodial trust

Credit Card Number May Not Be Copied When Card Presented for Check Identification (H. 3053, Rep. Kirsh). This bill prohibits a credit card account number from being copied when the card is presented for check identification, an offense punishable by a fine not exceeding \$200 or imprisonment not exceeding 30 days. However, this legislation does not prohibit a person from recording the number and expiration date as a condition for cashing the check when that person has agreed with the card issuer to cash checks as a service to the issuer's cardholders and the issuer guarantees cardholder checks cashed by that person.

Professional Corporation May Designate Employee or Agent To Represent Corporation in Magistrate's Court (H. 3054, Rep. Kirsh). This bill allows a professional corporation to designate in writing one of their employees or agents to represent the corporation in magistrate's court and specifies that the person so designated to represent the corporation in magistrate's court is not engaged in the unauthorized practice of law.

Equal Number of Peremptory Challenges Allowed to Defendants and the State in Criminal Cases (H. 3056, Rep. Tucker). Current law entitles persons charged with certain offenses (e.g., murder, armed robbery) more peremptory challenges than are entitled to the State. (For instance, a person arraigned for murder is entitled to a maximum of 10 peremptory challenges, while the state in such a case is entitled to no more than 5 peremptory challenges.) If this legislation is adopted, however, the number of peremptory challenges allowed to defendants and the State would be equalized.

Circuit Court Jury Lists To Be Drawn from Names of Registered Voters Instead of from Drivers Licenses Records (H. 3057, Rep. Tucker). Current law requires the State Election Commission to furnish a jury list to each county from merger of a list of the county's registered voters and a list of county residents who possess a South Carolina driver's license or identification card. If this legislation is adopted, however, the jury list would consist only of the list of



## Legislative Update, January 17, 1995

the county's registered voters (meaning the list of eligible jurors in the county would consist of the county's registered voters).

Number of Jurors Required to Impose Death Penalty for Murder Convictions Reduced from 12 to 10 (H. 3058, Rep. Tucker). This is a proposed constitutional amendment which reduces from 12 to 10 the number of jurors required to impose the death penalty for a person convicted of murder.

Legislators Prohibited from Being Elected to Salaried Office or Position While Member of the General Assembly (H. 3062, Rep. Vaughn). This bill prohibits a member of the General Assembly from being elected to a salaried office or position while serving in either chamber and for two years after he is no longer a member of the General Assembly. These provisions, however, would not apply to persons serving in the General Assembly at the time this legislation becomes effective. For purposes of this bill, a "salaried office or position" is one in which a person receives compensation for services rendered but does not include receipt of per diem, mileage or subsistence received in performing responsibilities.

Magistrates Allowed to Serve Past 72nd Birthday (H. 3067, Rep. Waldrop). Under current law, a magistrate must retire by the end of the fiscal year in which he reaches age 72. Under this bill, however, a magistrate would be permitted to remain in office after his 72nd birthday so long as the appointing authority consents to and by appointment provides for the magistrate's continued service.

Lost or Stolen Pistols Must Be Reported to Local Law Enforcement Agency and to State Law Enforcement Division (H. 3068, Rep. Baxley). This bill requires anyone who possesses a pistol that becomes lost or stolen to report this fact to the local law enforcement agency having jurisdiction in the area where the person resides (or is located, if not in his place or residence) and to the State Law Enforcement Division (SLED) within 5 days after he determines the pistol has been lost or stolen. The report must include (if known) the serial number of the pistol and other information as required by the local law enforcement agency and SLED. This information is to be maintained by SLED and is to be available to local, state and federal law enforcement agencies and prosecutors in performing their official duties. Anyone who fails to report the lost or stolen pistol as required in this legislation after the 5th day of its loss or theft is subject to a civil penalty of \$50 a day, up to a maximum of \$500, and is guilty of a misdemeanor (punishable upon conviction by a fine of not more than \$200 or imprisonment not exceeding 30 days), with each violation being a separate offense.

Prohibition Against Filing of Civil Action for Personal Injury Damages/Wrongful Death Arising out of One's Criminal Activity (H. 3069, Rep. Davenport). This bill prohibits a person or his personal representatives from filing a civil action for injuries or wrongful death resulting from a crime the person committed. These provisions would apply to actions brought against the victim of a crime or attempted crime or an individual acting on behalf of the



## Legislative Update, January 17, 1995

victim who, while defending his or another individual's property or life, inflicts injury or bodily harm upon the person who committed the crime.

Persons Delinquent in Child Support Payments of Certain Levels Must Be Reported to Consumer Reporting Agencies (H. 3071, Rep. Shissias). This bill requires clerks of court to provide consumer credit reporting agencies a monthly report of persons who are delinquent in their child support payments in excess of \$1,000.

Denial of Professional and Driver's License Renewals or Applications for Persons in Arrears in Making Child Support Payments (H. 3072, Rep. Kirsh; H. 3114, Rep. P. Harris; and H. 3163, Rep. Wilkins).

H. 3072, H. 3114 and H. 3163 all provide for the suspension, refusal to renew, and denial of driver's licenses, motor vehicle licenses, and professional licenses (i.e., licenses to engage in a business, occupation or profession) of persons who are more than calendar 90 days in arrears in paying child support. H. 3072 and H. 3163 are identical bills; H. 3114 is similar to H. 3072 and H. 3163, though H. 3114 lacks some of the provisions contained in the other two bills. (Differences between H. 3114 and the other two bills will be explained at the end of this summary.)

These bills require the clerks of court on a monthly basis to provide the Department of Social Services' Division of Child Enforcement with a verified report of persons who, pursuant to an order for child support rendered by or registered in a court of this State, are more than 90 days in arrears in making payments in full for current support or in making periodic payments on either a support arrearage or reimbursement for public assistance. The report must include the names, last known addresses and social security numbers of those individuals. Upon receipt of the report, the licensing entity must suspend or refuse to renew the license of the individual appearing in the report; however, if the licensee requests a review of the suspension/refusal to renew by the licensing entity (with the licensee under such review limited to challenging whether the licensee is the individual out of compliance with the support order or whether the amount or duration of the arrearage at the time of verification by the clerk is correct) or files a petition in family court seeking to hold the arrearage in abeyance and to establish a periodic payment schedule to come into compliance, suspension or license renewal refusal must be delayed until the matter is resolved. The entity must reinstate the license upon receipt of certification from the clerk of court that the individual is in compliance with the order for support and is otherwise eligible for reinstatement. A person denied an initial (i.e., "first-time") license under these provisions also may seek review by the licensing entity or file a petition to hold the arrearage in abeyance and must be issued the license once the licensing entity receives certification from the clerk of court that the individual is in compliance with the order for support.

The bills provide that information on persons in arrears on payments of child support provided to a licensing entity is subject to disclosure in accordance with the Freedom of Information Act. However, it is a misdemeanor for a person to release without authorization this information as received by a



## Legislative Update, January 17, 1995

licensing entity, punishable upon conviction by a fine not exceeding \$500 and/or imprisonment not exceeding 6 months. DSS, to the extent funds are available, must reimburse a licensing entity (from federal funds provided to DSS) the portion of costs allowable in federal law and regulation for the enforcement and collection of child support payments and incurred by the licensing entity in carrying out responsibilities under these provisions. Each licensing entity must provide the Division information on licensees for use in establishment, enforcement and collection of child support obligations.

The bills also provide that when an individual is to receive court-ordered child-support, and payments for such are not to be paid to the individual through the clerk of court, then the individual may petition the family court so as to request it (the court) to direct appropriate licensing entities to suspend the license of an individual who is ordered to pay support if the individual is not in compliance with the support order.

There are only 2 differences between H. 3072/3163 and H. 3114, as follows:

(1) H. 3072 and H. 3163 (unlike H. 3114) contain a provisions requiring employers doing business in South Carolina to report (for child support enforcement purposes) the hiring of persons residing or working here for whom it is anticipated that earnings will be paid and the hiring, rehiring or return to work of an employee who was laid off, furloughed, separated, granted leave without pay or terminated from employment. (This provision also was contained in H. 3119, a bill introduced last week by Representative Shissias and summarized later in this Update.) The bill lists exceptions to the reporting requirement (mainly pertaining to certain temporary employees or employees earning under a certain wage level) and imposes a civil fine of \$250 for an employer failing to file this report.

(2) H. 3072 and H. 3163 (unlike H. 3114) allow the Division of Child Support of DSS to publish in South Carolina newspapers the names of delinquent child support obligors who owe unpaid child support; publication may include the places of residence and amount of unpaid child support of each obligor. The bill extends immunity from civil and criminal liability to newspapers and their employees who publish this information, unless publication is the result of negligent or intentional misconduct.

New or Increased Taxes Must Be Approved by 2/3 of General Assembly or by State's Voters (H. 3074, Rep. Cato). This joint resolution seeks to amend the Constitution to require any bill or resolution imposing or increasing a tax or fee to be submitted to the state's voters for approval if the bill or resolution does not receive the approval of two-thirds of the House (83 of 124 members) and two-thirds of the Senate (31 of 46 members).

Term Limits for Legislators and State Constitutional Officers (H. 3075, Rep. Cato; H. 3080, Rep. Cromer; H. 3120, Rep. Klauber; and H. 3246, Rep. McElveen).



## Legislative Update, January 17, 1995

During the 1993-1994 legislative session, several constitutional amendments were proposed in the House which would limit the terms of state legislators and constitutional officers. One of these proposals, H. 3290, was reported out of the House Judiciary Committee but never came to a vote on the floor of the House, remaining on the House Contested Calendar at the end of the 1994 session.

With the 1995 session underway, three proposed constitutional amendments were introduced the first week of the session to limit the terms of state legislators and statewide-elected constitutional officers (e.g., secretary of state, attorney general, etc.). Also introduced was a bill which would limit legislators (but not statewide-elected constitutional officers) to either 6 years in office (if in the House) or 12 years in office (if in the Senate). Summaries of these four term limits proposals are as follows:

H. 3075 would limit House members to 6 consecutive 2-year terms and Senators to 3 consecutive 4-year terms, while state constitutional officers would be limited to 2 consecutive 4-year terms. Furthermore, for purposes of this term limit provision, a person who has served half or more of the term for which he was elected is deemed to have served the full term.

H. 3080 would limit House members to six 2-year terms, Senators to three 4-year terms, and state constitutional officers to three 4-year terms.

H. 3120 would limit House members to 6 complete 2-year terms, Senators to 3 complete 4-year terms, and state constitutional officers to 3 complete 4-year terms. The 12-year limitation contained in this proposal would apply whether the service in office is consecutive or nonconsecutive (i.e., this would provide a lifetime limit of 12 years in office).

H. 3246 would limit House members to three consecutive 2-year terms in office and Senators to three consecutive 4-year terms in office. A member of either body serving in office at the time these provisions are effective and who has served the prescribed 3-term limit could continue to serve their then-current term, after which they must leave their respective chamber for at least 1 intervening term. This bill also provides that service of a partial term in either chamber after filling a vacancy is not considered to be a full term for purposes of this term limitation requirement.

Initiative Petition (H. 3077, Rep. Cromer). This bill would allow voters to approve statutory laws and constitutional amendments through initiation of a petition (i.e., a certain percentage of voters signing a petition to place a proposed law or amendment on the ballot), without having to go through the legislative process. This legislation would be effective only if a constitutional amendment is ratified authorizing these provisions.

The bill prohibits certain matters from being proposed by initiative petition---as examples, measures pertaining to religious practices or institutions, reversal of judicial decisions or removal of judges, and state appropriations. No measure relating to more than 1 subject may be proposed by initiative petition. Before circulating a petition, an application signed by at



## Legislative Update, January 17, 1995

least 5 registered voters (here called "sponsors") must be filed with the State Election Commission. The application must include a copy of the petition that lists a full and correct copy of the proposed measure and must be approved by the Commission if certain requirements are met (e.g., the measure is in proper form as to text and title, relates to only 1 subject), and then certified copies of the petition must be provided to each sponsor. Upon receipt of these copies, sponsors have 6 months to obtain sufficient signatures to place the measure on the ballot (requires signatures of at least 10 percent of the number of registered voters at the last general election). Every registered voter in the state may sign the petition, but no signature on a petition is valid unless made in the presence of a sponsor.

Each petition must be delivered to the State Election Commission at least 180 days before any general election for purposes of verifying signatures and other requirements of the petition. If the petition contains enough valid signatures to meet the 10 percent requirement, then the proposed law or constitutional amendment must be submitted to the voters at the next general election, and if the proposed law or constitutional amendment is adopted by the voters, then it becomes effective on the July 1 following the general election. No statutory law or constitutional amendment approved by the voters may be vetoed by the governor, and no defeated initiative can be resubmitted to the voters within 4 years of the general election in which that initiative was defeated.

This legislation also makes it a misdemeanor (punishable by a fine not exceeding \$1,000 and/or imprisonment not exceeding 90 days) for a person to sign a petition if he is not a registered voter, to sign a name other than his own to the petition, to knowingly sign his name more than once for the same measure at one election, or for an officer or person to knowingly and wilfully violate other provisions of this legislation.

Nonpartisan Election of County Governing Bodies (H. 3078 and 3079, Rep. Cromer).

H. 3078 provides a method by which members of a county governing body may be elected through nonpartisan elections. If nonpartisan elections for this body are not provided for, then nomination of candidates for this office may be by party primary, party convention or by petition.

A county governing body may by ordinance provide for election of its members through nonpartisan election. The ordinance adopting the nonpartisan election method is effective at the next general election if adopted at least 120 days prior to the general election. Results in election of persons to these posts must be determined by a majority of votes cast, with a runoff required two weeks later if no candidate for a single office wins a majority or if an insufficient number of candidates receives a majority of votes cast for a group of offices. The county governing body may determine by ordinance that either filing a statement of candidacy or a petition with the county election commission is required to place a candidate's name on the ballot in nonpartisan elections. If county council determines, or if the petition states, that the petition method



## Legislative Update, January 17, 1995

be used, then at least 5 percent of the registered voters of the geographical area of the office for which the person offers as a candidate must sign the petition. Members elected in a nonpartisan method must serve staggered terms.

H. 3079 allows a county to elect the members of its governing body in a nonpartisan election through one of two methods: (1) the county governing body may by ordinance adopt 1 of 3 alternative methods (described shortly) for nominating candidates and determining results; or (2) a referendum requesting one of the 3 methods be used can be called upon petition of at least 10 percent of the county's registered voters. The referendum may be held in a general election or a special election. The 3 alternative methods for nominating candidates for and determining results of nonpartisan elections are (a) the nonpartisan plurality method; (b) the nonpartisan election and runoff election method; and (c) the nonpartisan primary election method and general election method. If nonpartisan elections are not called for, then nominations for these offices may be by party primary, party convention or petition.

In conducting nonpartisan elections using the plurality method, election results must be determined by the person (or persons, in elections for a group of offices) receiving the highest number of votes. In nonpartisan elections using the election and runoff election method, a majority is required to win office, with a runoff required if such does not occur in the first election. In nonpartisan elections using the primary election and general election method, a primary must be held to reduce the field of candidates to 2 for each position to be filled, if there are more than 2 candidates for a single position or the number of candidates for a group of offices exceeds twice the number of positions to be filled. In the general election, the names of candidates nominated without primary opposition and candidates nominated in the primary must be placed on the ballot, with the candidate with the highest number of votes for a single office declared elected and those candidates for a group of offices receiving the highest number of votes (equal to the number of positions filled) are declared elected.

The county governing body may by determine by ordinance that either filing a statement of candidacy or a petition with the county election commission is required to place a candidate's name on the ballot. If petition is used, at least 5 percent of the registered voters of the geographical area of the office for which a person offers as a candidate must sign the petition. If any nonpartisan election results in a tie, the county election commission must conduct a runoff election 2 weeks following the election.

Revision of Membership of Legislative Judicial Screening Committee (H. 3081, Rep. Cromer). Current law requires the General Assembly, when an election is to be held in joint session, to appoint a joint committee of 8 legislators (4 from the House and 4 from the Senate) to consider qualifications of candidates. This bill would require, for purposes of judicial elections only (election of candidates to Family Court, Circuit Court, Court of Appeals and Supreme Court), that the joint committee be expanded to 9 members so as to include non-legislators on the committee, with membership as follows:

- (a) 3 members of the House;



## **Legislative Update, January 17, 1995**

(b) 3 members of the Senate; and

(c) 3 persons who are not members of the General Assembly. These 3 persons would be elected to 4-year terms by the General Assembly in joint session, from a list of 5 individual South Carolinians recommended to the General Assembly by the South Carolina Bar. If the General Assembly rejects all or some of these recommendations, then the Bar is to provide additional names as necessary to allow the General Assembly to fill these seats. The 3 non-legislator members may not be re-elected to the judicial screening committee, and any vacancies for these 3 positions must be filled in the manner of original selection.

**Persons Convicted of State or Federal Felonies Ineligible for Legislative or Other Elected Offices** (H. 3083, Rep. Cromer). This joint resolution proposes to amend the Constitution to prohibit anyone who has been convicted of a felony under state or federal law or who has pled guilty or nolo contendere to a felony from being eligible to serve in the General Assembly or in any popularly-elected office in the State or its political subdivisions. If this joint resolution is adopted by the General Assembly, it would be submitted to the voters as a constitutional amendment in the November 1996 general election.

**Nonpartisan Election of County Auditor, Treasurer and Clerk of Court** (H. 3084, Rep. Cromer). This bill provides a procedure by which a county may elect its auditor, treasurer and clerk of court in a non-partisan election. Under these provisions, a county may pass an ordinance calling for non-partisan election for these 3 offices. If non-partisan elections are not provided for these offices, then nomination for candidates for these offices may be by party primary or convention, or by petition. The county governing body by ordinance may determine that either filing a statement of candidacy or a petition with the county election commission is required to place the candidate's name on the ballot in non-partisan elections. Should a petition initiate the non-partisan election method, then the petition must state wherein a statement of candidacy or petition is required to place the candidate's name on the ballot. If county council determines or if the petition states that the petition method be used, then the petition requires the signatures of at least 5 percent of the registered voters of the geographical area for which he offers for office.

The bill requires results in nonpartisan county elections to be determined by a majority of the votes cast, with a second election (or runoff) required if no one candidate receives a majority. The majority requirement applies whether for a single office or two or more offices (the latter meaning a number of persons seeking election to a group of offices). The ordinance adopting this non-partisan election method is effective at the next general election if adopted at least 120 days before the general election.

**Restitution Required for Persons Convicted of Writing Fraudulent Checks** (H. 3086, Rep. Cromer). Under these provisions, when a person is convicted of drawing and uttering a fraudulent check, the court must require restitution within 10 days of the sentence, in addition to any other penalties imposed for this offense. (Under current law, the imposition or execution of a sentence of a person convicted of this crime a first time must be suspended if the defendant makes restitution and pays reasonable court costs, while suspension of imposition



## Legislative Update, January 17, 1995

or execution of sentences for second or subsequent offenses is at the court's discretion.)

**Fees and Costs Collected by Magistrate's Court** (H. 3090, Rep. Cromer). This bill increases fees for various services conducted by magistrates. Under this legislation, the current fee (\$25) in civil actions for a magistrate's issuance of a summons and a copy for a defendant and for giving judgment with or without hearing would rise to \$50 when the amount in controversy in the civil action is between \$1,000 and \$5,000 (would remain \$25 for civil actions of amounts below \$1,000). The fee collected by a magistrate for proceedings by a landlord against a tenant or lessee would rise from \$10 to \$25, while an additional fee of \$75 is required when a jury trial is requested in a civil action in magistrate's court (with this fee to be paid by the party requesting the jury trial and to be taxed against the losing party).

**Meetings of Legislative Caucuses Must Be Open to Public** (H. 3091, Rep. Cromer). This bill would amend the State's Freedom of Information Act to require meetings of a legislative caucus to be open to the public.

**South Carolina Business Corporation Act** (H. 3094, Rep. Cromer). This legislation requires any corporation owning real property or only personal property in South Carolina to file a notice with the Secretary of State's office when the corporation's name is changed by amendment of its articles, or by merger, share exchange or reorganization. (Current law only requires corporate name changes to be filed in the office of mesne conveyances of the county where the real property is located.) The filing must include the reason for the name change and indexed and recorded in the Secretary of State's Office. Additionally, no corporation is permitted to change its name more than once every 6 years, and all prior names of the corporation must be indexed and recorded with the corporation's current name.

This bill also requires all mercantile and industrial establishments having a place of business in this state (except for lawfully-chartered corporations and individuals conducting their business under and in their own individual names) to register ownership information with the Secretary of State and requires changes in the name of the mercantile or industrial establishment (along with the reason for the change) also to be filed with the Secretary. As for corporations, this bill also would prohibit mercantile or industrial establishments from changing the name of their business more than once every 6 years. The bill increases from 25 cents to \$1.00 the fee received by a clerk of court for filing this name change and also imposes the \$1 fee for name change notices filed with the Secretary of State's office. Finally, the bill increases from a maximum of \$1.00 (one dollar) to a maximum of \$100 the fine which may be imposed on any person violating provisions governing names of business establishments (for each day the mercantile business does business in violation of those provisions).

**Mandatory Minimum Imprisonment for Persons Sentenced to 2 or More Life Terms for Kidnapping** (H. 3095, Rep. Kirsh). This bill prohibits a person convicted of kidnapping and sentenced to two or more consecutive life



## Legislative Update, January 17, 1995

imprisonment terms from being eligible for parole until having served at least 20 years' imprisonment.

Definition of "Violent Crimes" Also Includes Crime of Homicide by Child Abuse (H. 3096, Rep. Thomas). This bill expands the statutory definition of "violent crime" to include the crime of homicide by child abuse.

Persons Convicted of Murder Must Be Sentenced to Life Without Parole If There Are Aggravating Circumstances and When Jury Does Not Recommend the Death Penalty (H. 3097, Rep. Kirsh). Under current South Carolina law, a person convicted of murder in a case where an aggravating circumstance is found must (if not sentenced to death) be sentenced to life imprisonment with eligibility for parole after 30 years' service. If this legislation is adopted, however, a person convicted of murder in such a case (i.e., where an aggravating circumstance is found) must be sentenced to life without any eligibility for parole (if not sentenced to death).

Convicts Ineligible for Parole if Sentenced to Life Imprisonment (H. 3098, Rep. Simrill). This bill prohibits anyone sentenced to life imprisonment from being eligible for parole.

Mandatory Life without Parole and Additional Crimes for Which Life Imprisonment May Be Imposed (H. 3099, Rep. Simrill). Current law requires (except in cases where the death penalty is imposed) anyone with a third conviction for a violent crime in South Carolina (including convictions for violent crime in other states or of a federal offense) to be sentenced to life imprisonment without parole. If this legislation is adopted, however, mandatory life imprisonment without parole also would be imposed upon a third conviction for felonies carrying a maximum imprisonment of 20 to 30 years and other felonies with varying penalties (mainly drug offenses and murder.) The bill also deletes a provision granting discretion to the solicitor to seek this sentencing. Furthermore, a person sentenced to life without parole under this provision is ineligible for parole, extended work release, supervised furlough or early release.

Acknowledgment of Paternity To Be Released to DSS for Purpose of Establishing Paternity (H. 3100, Rep. Shissias). Current law prohibits a paternity acknowledgement from being subject to inspection except upon order of the family court. This bill makes an exception to that prohibition such that a paternity acknowledgement must be provided to the Department of Social Services upon request at no charge, for the purpose of establishing a child support obligation.

Child Support Must Be Ordered When Child Is Past Age 18 in Certain Cases (H. 3101, Rep. Shissias). This bill requires the Family Court to order child support for a child between his 18th and 19th birthday if he is in high school and making satisfactory progress toward completion of high school, unless exceptional circumstances are found to exist or there is a pre-existing condition to provide for child support past age 18.



## Legislative Update, January 17, 1995

**DSS May Pursue State and Federal Tax Refund Offsets for Delinquent Child Support Payments** (H. 3103, Rep. Shissias). This bill authorizes the Department of Social Services (DSS) to pursue federal and state tax refund offsets for delinquent child support payments and for obligors qualifying for submittal under federal or state law. DSS may pursue such tax refund offsets even if the obligor is in compliance with a court order requiring periodic payments toward satisfaction of the delinquency or even if the delinquent amount has been placed in abeyance by court order.

**Revision of "Support Order" for Purposes of Income Withholding to Enforce Support Orders** (H. 3104, Rep. Shissias). This bill revises the definition of "support order" to mean an order of a court which provides for periodic payments of funds for the support of a child or maintenance of a spouse or former spouse and support of a child, whether incidental to a proceeding for divorce, separation, separate maintenance, paternity, guardianship or otherwise. The bill also provides that a "support order" includes an order providing modification of support payment of an arrearage or reimbursement of support.

**Recognition by Clerks of Court of Assignment of Rights to Child Support** (H. 3105, Rep. Shissias). This bill provides that a clerk of court must recognize an assignment of rights to child support upon notice from the Department of Social Services and without the requirement of an order.

**Procedure for Retirement Systems to Act on Judicial Orders Providing for Alimony or Marital Property Rights** (H. 3107, Rep. Sheheen). This bill lists procedures which the state's various retirement systems must follow when acting on judicial orders providing for alimony or marital property rights which affect benefits paid by these systems. Under these provisions, a "qualified domestic relations order" (i.e., domestic relations order creating or recognizing a spouse/former spouse's right, or assigning such right, to receiving benefits to a member or retired member under the state's retirement system) may order all or part of a retirement benefit, withdrawal or refund of contributions, disability benefit or death benefit becoming payable under the retirement system on the account of the member or retired member instead be paid to the member's spouse or former spouse. The bill lists conditions under which a domestic relations order is a "qualified domestic relations order" and conditions under which the retirement system may reject a domestic relations order as a qualified one. The administrator of the retirement system has exclusive authority to determine whether a domestic relations order is a qualified one, and appeals from the administrator's decision in this area must be taken to the Administrative Law Judge Division. If adopted, this act would take effect July 1, 1995

**Lowering of Percentages of Blood Alcohol Content Used to Make Presumptions in DUI Cases** (H. 3112, Rep. Kirsh). This bill would lower, over a two-year period, the blood alcohol content percentages necessary to make presumptions in determining guilt in DUI cases, as follows:

	Current Law	July 1, 1995	July 1, 1996
Presumed conclusive-			



## Legislative Update, January 17, 1995

ly that person was not  
under influence of al-  
cohol.

.05 or less

.04 or less

.03 or less

No inference as to  
whether person was  
or was not under  
influence of alco-  
hol.

Excess of .05  
but less than  
.10

Excess of .04  
but less than  
.09

Excess of .03  
but less than  
.08

Inference that per-  
son was under influ-  
ence of alcohol.

.10 or more

.09 or more

.08 or more

Current law specifies that it may be inferred that a person with a blood alcohol content of .10 or more was DUI, but if this bill is adopted, it must be inferred that a person with a certain level of blood alcohol content (.09 or more in 1995, .08 or more in 1996) was DUI.

**Family Courts May Order Parties in Divorce Action to Attend Parent and Child Transition Programs** (H. 3115, Rep. Shissias). This bill requires the Department of Alcohol and Other Drug Abuse Services to develop and implement a Parent and Child Transitions program, an educational program concerning the effects of divorce of children. This program is for use with the Department's clients and as may be ordered by the family court, and the Department may charge a fee to participants in the program and develop a sliding fee charge in applying such fees. Under these provisions, the family court, on its motion or the motion of either party in a proceeding involving minor children in matters of divorce, separation or custody, may order the parties to participate in the Parent and Child Transitions Program. The court also may require the parties to pay for participation in the program unless the parties are financially indigent.

**Term Limits for Members of State Boards and Commissions** (H. 3118, Rep. Shissias). This bill prohibits the governor from appointing or the General Assembly from electing anyone to a state board or commission who has served the longer of two successive full terms or 12 successive years; however, persons currently serving on these boards or commissions whose tenure exceeds this limitation may complete their current term, and a person may be appointed or elected to the same board or commission after an absence of two years. Life members of the Clemson University Board of Trustees are exempt from this term limitation requirement.

**Employers Must Provide Employee Information to DSS for Child Support Purposes** (H. 3119, Rep. Shissias). This bill requires employers doing business in South Carolina to report to the Division of Child Support Enforcement of the Department of Social Services the hiring of persons working in the State for whom earnings are anticipated and the hiring, rehiring or return to work of employees who were laid off, furloughed, separated, granted leave without pay or terminated

## Legislative Update, January 17, 1995

from employment. Persons hired by an employer need not be reported in certain cases of sporadic or temporary employment (for example, if the employee will be employed temporarily for a period of 1 month or less). Information provided to the Division pursuant to these provisions is to be retained only if the Division is responsible for establishing, enforcing or collecting a support obligation or debt of the employee; should the employee not owe an obligation or debt, then the office cannot create a record on the employee and must destroy information contained in the report.

Employers must submit these reports within 5 days of the hiring, rehiring or return to work of an employee, with each report required to contain the employee's name, social security number, date of birth and hire, along with the employer's name, address and any applicable identifying number. Any employer failing to make this report is subject to a civil fine of \$250. (NOTE: Provisions of this bill were also included in H. 3072 and H. 3163, summarized on page 22 of this Update.)

**Appointment, Qualifications of Adjutant General (H. 3121, Rep. Wilkins).** This bill serves as the implementing legislation for H. 3122 (summarized below), a proposed constitutional amendment to make the office of adjutant general an appointive, instead of currently an elected, position. Under H. 3121, the term of the adjutant general, as appointed by the governor, would be coterminous with the governor. The bill also sets minimum requirements for eligibility for appointment to adjutant general, with a candidate required to (1) be a registered voter; (2) possess at least 10 years' of federally-recognized commissioned experience in the National Guard; (3) be in the grade O-6 or above in the National Guard; and (4) not reach age 64 prior to expiration of the term for which he is appointed. In addition to these qualifications, the governor in making his appointment to this position is also to consider military experience, including command experience and promotion criteria for the rank of major-general and above in the uniformed services. This legislation would take effect upon ratification of a constitutional amendment (summarized below in H. 3122) deleting the office of adjutant general as an elective office and instead making the office an appointive one.

**Constitutional Amendment to Make Adjutant General an Appointed Office (H. 3122, Rep. Wilkins; and H. 3179, Rep. Cromer).**

Currently in South Carolina there are 9 constitutional officers elected on a statewide basis--governor, lieutenant governor, secretary of state, attorney general, superintendent of education, commissioner of agriculture, treasurer, comptroller general, and adjutant general. During the 1994 session, legislation was introduced to delete the current constitutional requirement that the adjutant general be elected by the state's voters and instead to require that the adjutant general be appointed by the governor. The constitutional amendment and accompanying implementing legislation did not get out of committee last year, but two constitutional amendments were introduced last week to make this office an appointive one, as follows:



## Legislative Update, January 17, 1995

H. 3122 would make the position of adjutant general an appointive one, beginning upon the expiration of the term of the person holding that position on the date of the 1998 general election. Under this proposed constitutional amendment, the adjutant general would be appointed by the governor, to serve a term (4 years) conterminous with that of the governor. Qualifications for adjutant general would be set by law by the General Assembly, and vacancies in the position would be filled in the manner of original appointment for the remainder of the unexpired term. Additionally, H. 3122 would change the Adjutant General's formal title from "Adjutant and Inspector General" to "Adjutant General" and would change his military rank from "Brigadier General" to "Major General."

H. 3179 is identical to H. 3122, with one exception---unlike H. 3122, H. 3179 requires the governor's adjutant general appointment to receive the advice and consent of the Senate.

Family Court May Order Parties in Divorce Action to Attend Educational Program on Effects of Divorce on Children (H. 3126, Rep. Wilkins). This bill grants to the Family Court the authority, in proceedings involving minor children, to order the parties to attend an educational program concerning effects of divorce on children. The court may require the parties to pay for the cost of the program, unless the parties are financially indigent.

### Confederate Flag (H. 3129, Rep. J. Brown; H. 3168, Rep. Cooper).

During the 1993-1994 session, several pieces of legislation were introduced concerning the flying of the Confederate flag atop the Capitol building (State House). None passed the House, although the Senate at the close of the session passed legislation to remove the flag from atop the State House, fly the flag elsewhere on the State House grounds, and authorize construction of a civil rights monument on the ground. In November of last year, the State Supreme Court heard arguments concerning the legality of the flag's presence atop the State House, but gave no indication as to when a decision would be announced. Of the two pieces of legislation introduced this past week on the flag issue, one seeks to declare the flag removed from atop the State House, while the other proposes a statewide referendum on the matter, as follows:

H. 3129 is a concurrent resolution in which the General Assembly declares that the Confederate flag be removed from atop the State House.

H. 3168 is a bill which calls for a binding referendum in the November 1996 general election to determine if the Confederate battle flag is to be flown atop the State House, in the chambers of the House and the Senate, and in the foyer of the State House. If the referendum is approved, the flag accordingly would be flown in those locations. Aside from the Confederate, U.S. and South Carolina flags, no other flag could be displayed in those locations or atop or within any other building owned by the State or its political subdivisions.

Personal Service Contracts (H. 3131, Rep. Hodges). This bill would repeal the State's Personal Service Contracts Law (Chapter 19 of Title 41 of the State

## Legislative Update, January 17, 1995

Code of Laws), which makes it a misdemeanor (punishable by fine of between \$25 and \$100 or imprisonment of between 20 and 30 days) to violate certain provisions governing these contracts (e.g., fraudulently failing to perform personal services after receiving advances. fraudulently failing to make compensation for personal service agreed on).

Persons May Serve on Juries More than Once Every 3 Years (H. 3132, Rep. Hodges). Current South Carolina law prohibits a person from serving as a juror more than once in three calendar years. This bill, however, would allow a person whose name has been properly drawn and who so desires to serve as a juror more than once every three calendar years, provided that no person may serve as a juror more than once a year.

Constitutional Amendment to Make State Superintendent of Education an Appointed Office (H. 3133, Rep. Hodges; and H. 3184, Rep. Wilkins).

Currently, the State Superintendent of Education is an elective office, with the person holding that position elected at the same time other statewide-elected constitutional officers (governor, lieutenant governor, attorney general, etc.) are elected. Two proposed constitutional amendments were introduced last week to make this an appointive position, as follows:

H. 3133 provides that beginning with the expiration of the term of the superintendent in office on the date of the 1998 general election, the person holding this position must be appointed by the governor with the advice and consent of the Senate. The Superintendent would serve at the pleasure of the governor and could be removed by the governor for any reason. Additionally, the State Board of Education would be abolished effective on the superintendent being appointed by the governor.

H. 3184 also would make the position of Superintendent an appointive one when the term of the superintendent in office at the time of the 1998 general election expires (i.e., January 1999), with the governor appointing the person holding this position to a 4-year term, coterminous with the governor and under qualifications provided by law by the General Assembly. Under H. 3184, appointment of the superintendent (unlike in H. 3133) does not require the advice and consent of the Senate; furthermore, unlike H. 3133, H. 3184 does not abolish the State Board of Education.

Appointment of Superintendent of Education (H. 3134, Rep. Hodges; H. 3183, Rep. Wilkins).

These bills repeal statutes which require the State Superintendent of Election to be elected by the voters, as follows:

H. 3134 requires the Superintendent to be appointed by the governor (beginning in 1999) with the advice and consent of the Senate, with the Superintendent serving at the pleasure of the governor and subject to removal by the governor for any reason. Vacancies must be filled in the manner of original



## Legislative Update, January 17, 1995

appointment. This legislation also abolishes the State Board of Education, with its powers, duties and functions devolved upon the Superintendent.

H. 3183 also requires the Superintendent (beginning in 1999) to be appointed by the governor to a term (4 years) coterminous with the governor. If the position of Superintendent is vacant, then it must be filled in the manner of original appointment for the remainder of the unexpired term.

These two bills would be effective upon ratification of a constitutional amendment (summarized in H. 3133 and H. 3184) deleting the requirement that the Superintendent be elected by the state's voters.

**Joint Election of Governor and Lieutenant Governor (H. 3136, Rep. Hodges; H. 3156, Rep. Hodges).**

Currently in South Carolina, the governor and lieutenant governor are elected separately; in other words, the governor and lieutenant governor appear on different places on the ballot. This current system makes it possible for the governor and lieutenant governor to be elected from separate parties, as was the case during the last 8 years, when Republican Carroll Campbell was elected to two terms as governor while Democrat Nick Theodore was elected to two terms as lieutenant governor. Persons supporting H. 3136 and H. 3156 want the governor and lieutenant governor to be elected jointly (as is done at the national level when persons cast ballots for president and vice president), ensuring that the persons elected governor and lieutenant governor will be of the same party.

H. 3136 would amend the State Constitution to require that the governor and lieutenant governor be elected jointly, with voters casting one ballot for a candidate for governor and a candidate for lieutenant governor running together. The candidate receiving his party's nomination for governor would choose his party's nominee for lieutenant governor, with the General Assembly providing by law the manner in which the nominee for lieutenant governor is selected. If this joint resolution is adopted by the General Assembly (requires two-thirds approval of entire membership of each chamber), then the proposed constitutional amendment would be submitted to the voters at the November 1996 general election.

H. 3156 is a bill to serve as the implementing legislation for the constitutional amendment for joint election of the governor and lieutenant governor. Under this legislation, a party's candidate for governor, whether nominated by party convention or party primary, would select his nominee for lieutenant governor, with the nominee (for lieutenant governor) required to be ratified by a majority vote of the following individuals (voting as a group)--the party's members in the State Congressional Delegation, the party's elected statewide constitutional officers, and the party's executive committee. If this group rejects the party's nominee for lieutenant governor, then the candidate for governor must select another nominee. If a person files a nominating petition for either governor or lieutenant governor, then he also must include a running mate. This legislation would be effective only if the state's voters approved a constitutional amendment (as summarized above in H. 3136) requiring the joint election of the governor and lieutenant governor.



## **Legislative Update, January 17, 1995**

**Mechanical Voting Machine Models** (H. 3140, Rep. McTeer). This bill would delete the current requirement that the State Board of Voting Machine Commissioners be provided a mechanical voting machine model suitable for the instruction of voters.

**Driver's License Suspension for Persons Accepted into Pretrial Intervention Program for Certain Offenses** (H. 3150, Rep. Kirsh). Current law requires anyone convicted of a controlled substance violation, a violation of certain of the state's alcoholic beverage laws, or of unlawful alteration or use of a driver's license, to have his driver's license suspended for a specified period (with the time depending on the exact nature of the violation). This bill also would require a person's driver's license to be suspended if he is accepted into a pretrial intervention program when charged for an offense listed above, with the suspension in the same manner as if the person were convicted of the offense.

**Exemption of Certain State Employees from State Employee Grievance Procedure** (H. 3158, Rep. Quinn). This bill would exempt from the State Employee Grievance Procedure employees of the Lieutenant Governor's Office and employees of the offices of the state's other (aside from governor) statewide constitutional officers (Secretary of State, Attorney General, etc.) appointed by their employing constitutional officer to serve at or above the organizational level of assistant directors of individual program components.

**Criminal Sexual Conduct** (H. 3159, Rep. Inabinett). Current law provides that a person is guilty of criminal sexual conduct in the 3rd degree (punishable by maximum imprisonment of 10 years) if he engages in sexual battery with the victim and certain circumstances are present (e.g., person uses force to accomplish this crime). This bill would provide that a person also is guilty of this crime if he is an employee of a public primary or secondary school who engages in this act with a student in grades K-12 on school property or during a school-related activity on non-school property. In addition to the maximum penalty of 10 years mandated by law, the public school employee found guilty of this crime must be suspended from employment and, if applicable, lose his teaching certification.

**Shorter Legislative Sessions** (H. 3164, Rep. Wilkins; H. 3165, Rep. Wilkins; and H. 3171, Rep. Cave).

**H. 3164** is a joint resolution to amend the Constitution pertaining to sessions of the General Assembly. Under this proposed constitutional amendment, the annual session of the General Assembly would continue to convene on the second Tuesday in January in even-numbered years, but in odd-numbered years the General Assembly would convene on the second Tuesday in February. During odd-numbered years, the presiding officers of the House and Senate would convene on the second Tuesday in January for a maximum of two days to accept legislation introduced by any member and to refer that legislation to appropriate committees. Finally, this constitutional amendment would require the Senate to meet for organizational purposes shortly after the general election in years when that body is up for election (e.g., 1992, 1996, etc.) and would require officers of the General Assembly (Speaker, Senate President Pro Tempore, committee chairmen)



## Legislative Update, January 17, 1995

to be elected during the organizational session. (Currently the Constitution requires only the House to meet for organizational purposes after each general election.)

H. 3165 is a bill which would change the mandatory (or "sine die") adjournment of the regular annual session of the General Assembly from the current first Thursday in June to the second Thursday in May. Also, the current requirement that mandatory adjournment be extended by one statewide day for each statewide day the House fails to give third reading to the annual general appropriations bill by March 31 would be changed so that the session is accordingly extended if the House fails to give that bill third reading by March 15.

H. 3171 is a bill which would require the regular annual legislative session to adjourn sine die on the last Thursday in March, with the session extended by one statewide day for each statewide day after the first Thursday in February that the House fails to give third reading to the general appropriations bill. H. 3171 also would delete provisions allowing the General Assembly to extend the session. (Currently, the session may be extended by two-thirds vote of both the House and Senate, with extended session business limited to the general appropriations bill and any other matters approved for consideration by vote of 2/3 members of each chamber.)

Truth-in-Sentencing (H. 3166, Rep. Wilkins; H. 3238, House Judiciary Committee).

During the 1994 session, legislation was introduced to provide for "truth in sentencing," i.e., sentencing reform which provides more uniformity and predictability in sentencing. While this legislation did not pass the General Assembly last year, legislation to provide for this sentencing system was prefiled this year under H. 3166. Last week, the House Judiciary Committee rewrote this bill as H. 3238, which was introduced in the House without reference on Thursday, January 12, and debate on this measure is expected to begin the week of January 17. A summary of H. 3238 is listed below. Thanks is given to the House Judiciary Committee staff for preparing this summary:

---Requires a prisoner convicted of a violent crime to serve at least 80 percent of his imposed sentence before being eligible for work release; while prisoners convicted of non-violent crimes must serve at least 60 percent of their imposed sentences to be eligible for work release. (These requirements do not, however, apply to prisoners serving time in a local correctional facility.)

---Prohibits a prisoner from being eligible for early release, discharge or community supervision until the prisoner has served 85 percent of the imposed sentence (if convicted of a violent crime) or 70 percent of the imposed sentence (if convicted of a nonviolent crime). These percentages must be applied to the actual term of imprisonment. These percentages must be calculated without the application of earned work credits, education credits, and good time credits. Furthermore, these percentages are to be applied to the actual term of imprisonment, not to include the portion of the sentence which has been



### Legislative Update, January 17, 1995

suspended. If during the term of imprisonment a prisoner commits an offense or violates a rule of the institution, all or part of the credits can be forfeited at the discretion of the Director of the Department of Corrections. (Provisions of this paragraph do not apply to prisoners serving time in a local correctional facility.)

---Requires sentences imposed and time served to be computed based on a 365-day year (as currently opposed to a 360-day year).

---Requires all prisoners convicted of a crime in General Sessions Court on or after July 1, 1996 to satisfactorily complete a community supervision program operated by the newly-renamed Department of Probation and Community Supervision (as currently opposed to the Department of Probation, Parole and Pardon). The program's maximum duration is 2 years. Pursuant to recommendations of the probation agent, the court must determine when a prisoner fails to complete the program or when supervision should be revoked. If community supervision is revoked by the court, then the prisoner must be returned to jail for up to 1 year and then be recycled through community supervision until the supervision is successfully completed. Every prisoner must successfully complete this program before he is released from the criminal justice system and his sentence is satisfied. The Department of Probation and Community Supervision must notify registered victims of the place where the prisoner is to be released on the community supervision program.

---Revises sentencing options for persons convicted of murder, such that penalties for a murder conviction must be either death, life imprisonment, or a mandatory minimum sentence of 25 years, as follows: (1) in a death penalty case where the jury finds an aggravating circumstance but does not recommend the death penalty, then the court must impose a sentence on the defendant of life imprisonment; (2) in a death penalty case where an aggravating circumstance is found, the defendant must be sentenced to death or life imprisonment, but if an aggravating circumstance is not found, the defendant must be sentenced to either life imprisonment or a mandatory minimum of 25 years' imprisonment. For purposes of this paragraph, life imprisonment is to be taken literally (i.e., imprisonment until death). (As a comparison, under current law, a person convicted of murder must be sentenced to death or to life imprisonment with eligibility for parole after serving 20 years' imprisonment, or 30 years if there was an aggravating circumstance.)

---Provides that a person convicted of resisting arrest with use of a deadly weapon is not eligible for parole, with the penalty for this crime revised to provide for a mandatory minimum of 5 years but not more than 10 years' imprisonment. "Deadly weapon" is here defined as "any instrument which can be used to inflict deadly force."

---Allows the current \$10,000 cap on awards to and on behalf of crime victims may be increased up to \$25,000 with approval of two-thirds of the members of the Crime Victims' Advisory Board and the concurrence of the Director.



### Legislative Update, January 17, 1995

---Deletes a provision giving the Department of Parole and Community Corrections the right to make payment of a debt to the State (i.e., as a result of a criminal act) a condition for parole and provides that restitution payments are to be paid to the State Office of Victim Assistance.

---Allows the Department of Probation and Community Supervision and the Department of Corrections to exchange information on victims and witnesses who wish to receive notification.

---Deletes parole eligibility for burglary convictions, providing that this crime in the first degree is punishable by life imprisonment (with life meaning "life") or imprisonment of not less than 15 years.

---Requires an offender with a third conviction for a violent crime to be sentenced to life imprisonment. Written notice of the decision to invoke this sentencing must be given by the solicitor to the defendant and the defendant's counsel at least 10 days before the trial.

---Provides that nothing contained in provisions allowing the director of the Department of Corrections to designate a prisoner's place of confinement prevent a court from ordering a sentence to run concurrently with a sentence being served in another state or an active federal sentence.

---Provides that the current prohibition against selling on open market products made by inmates does not apply to products made by persons on community supervision.

---Amends provisions pertaining to good time credits to allow these credits to be received and computed at the rate of 3 days for every month served; however, no person is entitled to a reduction below the minimum sentences required for early release (85 percent for violent offenses, 70 percent for non-violent offenses), and these credits cannot be applied to prevent full participation in the pre-release and community supervision program.

---Allows for work and academic credits to be received and computed at the rate of 6 days' total for every month an inmate is employed or enrolled, with the maximum annual credit limited to 72 days. No credits earned under this paragraph can be applied in a manner to prevent full participation in the department's pre-release and community supervision program.

---Amends the shock incarceration program to add that upon order by the court, the shock incarceration selection committee may consider an inmate for participation in this program. Additionally, an inmate who has successfully completed this program must be released on community supervision for a period of 2 continuous years.

---Expands the duties of the director of the Department of Probation and Community Supervision to include those involving the community supervision program.



## Legislative Update, January 17, 1995

---Delineates the operational procedures of the Board of Pardons and prohibits anyone who commits a crime on or after July 1, 1996 from being eligible for parole. The board retains its duties pertaining to parole for crimes committed prior to that date, with parole requirements for crimes committed before July 1996 as follows: The board may grant parole to a violent offender by a two-thirds majority vote of the full board, except that parole for a violent offender who committed a crime prior to June 3, 1986 may be granted parole by majority vote of the board. Additionally, the board may grant parole to nonviolent offenders by unanimous vote of a 3-member panel or by majority vote of the full board.

---Deletes a reference to hearings by the board on any other form of clemency provided under law, instead limiting the board to consideration of cases for parole or pardons. Furthermore, no inmate has a right of confrontation at these hearings.

---Deletes a provision allowing the Director of the Board of Pardons to conduct surveys of correctional facilities for purposes of obtaining information to decide parole cases.

---Requires an adult placed on probation or community supervision to pay a regular supervision fee toward offsetting the cost of his supervision for as long as he remains under supervision. The Department of Probation and Community Supervision will determine this fee based on the person's ability to pay. The fee will range from \$20 to \$100 per month. Failure to pay all or part of the fee during the supervision period serves as revocation.

---Requires persons discharged from sentence without the benefit of supervision to be considered for a pardon upon the request of an individual anytime after the date of discharge.

---Provides that upon satisfactory fulfillment of conditions of probation or community supervision, the court may, with the recommendation of the agent in charge, terminate the probationer or supervised prisoner from supervision.

---Provides this act is effective July 1, 1996.

**Increased Penalties for Leaving Scene of Accident (H. 3172, Rep. Simrill).**  
Current law prohibits a person involved in an accident resulting in injury or death of another person from unlawfully leaving the scene of an accident, an offense punishable by imprisonment of between 30 days and 1 year and/or a fine of between \$100 and \$5,000. If this legislation is adopted, however, there would be tougher penalties for leaving the scene of an accident if death results, as follows:

(1) If Bodily Injury Results: Minimum 30 days' imprisonment deleted, although maximum imprisonment of 1 year and/or fine of \$100-\$5,000 remains intact;

(2) If Death Results: Imprisonment not exceeding 25 years and a fine of between \$10,000 and \$25,000.



## Legislative Update, January 17, 1995

**Tougher Penalties for Possession of Knife or Firearm During Commission of Violent Crime** (H. 3175, Rep. Govan). Under current law, a person who possesses or displays a firearm or knife while committing or attempting to commit a violent crime must be imprisoned 5 years for such possession or display (this is in addition to the punishment imposed for the principal crime). If this legislation is adopted, however, the additional penalty for possession or display of such weapons when committing a violent crime would increase to 10 years.

**Absentee Voting** (H. 3194, Rep. Hodges). This bill allows any registered voter to cast an absentee ballot. (Under current law, a person may vote by absentee ballot only under specified conditions---for example, if a person is serving in the armed forces or on a jury or is age 72 or older.) The bill also permits members of the armed forces and the Merchant Marine, spouses or dependents residing with them, other persons working in various organizations attached to the armed forces (along with spouses and dependents residing with them) and overseas citizens to apply for an absentee ballot using a federal form (Standard 76). The bill deletes provisions pertaining to county executive committees being responsible for furnishing absentee ballots and being required to tabulate primary ballots cast at an absentee voting precinct. Also deleted are provisions pertaining to duties and expenses of political parties in conducting absentee voting in primaries. If this legislation is adopted, these provisions would apply to elections conducted after June 30, 1996.

**Voting Changes** (H. 3195, Rep. Hodges). This joint resolution would amend the State Constitution to delete the current requirement that a registered voter in this state is entitled to vote only in his precinct of residence and that a registered voter who has moved his place of residence in the 30 days immediately prior to an election is entitled to vote in his previous precinct of residence for that election only.

**Possession and Sale of Hollow-Point Bullets Prohibited** (H. 3200, Rep. Lanford). This bill prohibits anyone in South Carolina from manufacturing, possessing, selling, transferring, or offering to sell or transfer hollow point bullets made of metal-encased plastic containing lead pellets that fragment on contact and which (according to the determination of the U.S. Bureau of Alcohol, Tobacco and Firearms) will penetrate body armor or other types of bulletproof vests and which would be illegal under federal law but for the fact they are made of plastic. Law enforcement agencies or officers or state or federal military entities or personnel using these bullets in the line of duty would be exempt from this prohibition. Violation of these provisions is a misdemeanor, punishable by a fine not exceeding \$2,000, or imprisonment not exceeding 2 years, or both, with each violation being a separate offense.

**Statute of Limitations on Civil Actions** (H. 3204, Rep. Limbaugh). Current law requires an extension period for filing a civil suit under the Statute of Limitations if the person at the time the cause of action accrued was under 18; insane; or imprisoned on a criminal or civil charge or in execution under sentence of a criminal court for a term less than his natural life. This bill would delete the provision authorizing an extension period for persons imprisoned.



## Legislative Update, January 17, 1995

Unlawful to Hire, Solicit or Persuade Person Under Age 18 to Commit a Violent Crime or Lynching (H. 3229, Rep. Whipper). This bill prohibits anyone age 18 or older from knowingly and intentionally soliciting, hiring, inducing, etc. under age 18 to commit a violent crime or a lynching as result of mob violence, or conspiring to solicit, hire, induce, etc. a youth to perform these crimes. This offense is a felony punishable by imprisonment of between 5 and 15 years, with each violation a separate offense.

Election Officials Prohibited from Participating in Political Campaigns (H. 3230, Rep. Kirsh). This bill prohibits election officials from becoming involved in any way in the campaign of a candidate for office, whether that office is a federal one (President, Vice President or Congress) or one that could be protested or appealed in an election contest to the board of canvassers. The restriction prohibits an election official from making financial contributions or contributing personal service to any candidate(s) for public office; publicly endorsing a candidate for such office; serving as a poll watcher for a candidate for office or for a political party (whether in a primary or general election); or serving as a poll manager in any election. The timeframe for this restriction runs from the beginning of an election cycle until the time a candidate files a final campaign report.

For purposes of this bill, an "election official" is a member or employee, whether elected or appointed, of a municipal, county or state election commission; a county voter registration board; a combined election commission and voter registration board; a municipal, county or state party executive committee; or a municipal, county or state poll manager or poll worker.

Prohibition on Use of Sound Amplification System to Produce Excessive Noise (H. 3233, Rep. J. Brown). This bill makes it unlawful to operate a sound amplification system which emanates unreasonably loud sounds that are likely to inconvenience or annoy persons, when the sound coming from the system is audible at a distance greater than 30 feet and the system is located in or on public property (such as a highway or park), a motor vehicle on a public road or space; or private property in a predominately residential area. This prohibition does not apply to use of warning devices (such as alarms) to signal dangerous or unsafe conditions or summon law enforcement assistance or to a person with a valid permit or similar instrument authorizing activity which is likely to produce these excessive noises. A person found guilty of this offense must be fined between \$50 and \$500 or imprisoned for not more than 30 days.

Screening of Retired Judges (H. 3237, Rep. Jennings). Current law allows the Chief Justice of the South Carolina Supreme Court to assign retired judges or justices to preside over certain courts (for example, a retired family court judge may be assigned to preside over a proceeding in family court). In order to be eligible for such assignment, the retired justice or judge must have been screened by a legislative judicial screening committee and must have been found "qualified" to serve in such situations within 2 years of appointment to serve. A justice or judge retiring before expiration of his then-current term is not required to undergo further screening until his term would have expired, provided he is to be assigned to the Supreme Court or Court of Appeals. This legislation



### Legislative Update, January 17, 1995

provides, however, that no further screening is required of any retired judge or justice (not just those to be assigned to the Supreme Court or Court of Appeals) to be assigned to preside under these circumstances if he retired before the end of his then-current term and until that term would have expired.

Judge Advocates Authorized To Witness Consent or Relinquishment for Purposes of Adoption (H. 3241, Rep. McElveen). This bill authorizes a judge advocate to witness the signing of a document of consent or relinquishment for purposes of adoption, provided he (the judge advocate) is certified by the judge advocate general of the respective branch of service.

Subcontractor May Reclaim Certain Materials (H. 3243, Rep. Davenport). This bill allows a subcontractor to reclaim all materials supplied to him in connection with a contract to improve real property and for which he has not been paid, even if a mechanic's lien or other lien has been filed with respect to that property. The bill further provides that when requested by the subcontractor, a law enforcement agency or department must render assistance to him (the subcontractor) in recovering such materials upon his presentation of evidence that he has not been paid for the materials so supplied. The bill also deletes a provision which exempts residential homebuilders and certain improvements to real property from the state's law governing payments to contractors, subcontractors and suppliers.

Uniform Premarital Agreement Act (H. 3244, Rep. McElveen). This legislation is identical to a bill introduced during the 1993 session (H. 3270) which authorizes prospective spouses contemplating marriage to draw up an agreement concerning how they will handle property, financial or other matters while married or in case of divorce. A premarital agreement (hereafter called "agreement") would be effective upon marriage and must be in writing, with a statement of assets and income each party attached to it and signed by both parties. The bill lists matters which may be included in the agreement, including, among others, the management and control of property; disposition of property upon separation, divorce or death; and making of a will to carry out the agreement's provisions. An agreement, however, may not adversely affect the right to child support.

The bill permits an agreement to be amended or revoked after marriage if signed by the parties, in which case the amended or revoked agreement is enforceable without consideration. The burden of proof to set aside an agreement is in the party alleging the agreement is unenforceable. The bill lists conditions under which an agreement is unenforceable (as examples, if the party executed the agreement involuntarily, did not have an adequate knowledge of the property or financial obligations of the other party, or the agreement was unconscionable at the time enforcement was sought) and provides that the issue of unconscionability of an agreement must be determined by the court as a matter of law. For purposes of this act, an "unenforceable premarital agreement" is one which, because of either lack of property or unemployability, would render a spouse without means of reasonable support; make a spouse a public charge; or provide a standard of living far below that enjoyed prior to the marriage. If a marriage is determined to be void, then an agreement which otherwise would have



## Legislative Update, January 17, 1995

been a premarital agreement is enforceable only to the extent necessary to avoid an inequitable result.

Constitutional Amendment to Specify Procedure for Enactment of Laws and Constitutional Amendments by Initiative Petition (H. 3245, Rep. McElveen). This proposed constitutional amendment grants to the people the power to enact laws and constitutional amendments through initiative petition.

This proposal requires an initiative petition to contain a full and correct copy of the title and text of the proposed law or constitutional amendment, signed by at least 10 percent of those persons registered to vote at the last general election. The petition must be submitted to the Secretary of State at least 60 days before the beginning of the next regular session of the General Assembly, and if the signatures are verified, then the Secretary must transmit the petition to the presiding officer of each chamber of the General Assembly, with each presiding officer responsible for causing the petition to be prepared in bill form. Perfecting amendments may be added to the bill in its initial preparation stage or while on the floor of the House or Senate. If, by the sine die adjournment date of the General Assembly immediately preceding the next general election, the bill has not been ratified by the General Assembly, vetoed by the governor or rejected on second or third reading in either chamber, then the Secretary of State must submit the proposed law or constitutional amendment to the state's voters at the next general election. If a majority of persons voting in the general election approve the proposed law or constitutional amendment, then it becomes a law of South Carolina or a part of the State Constitution. This proposed constitutional amendment also allows the General Assembly by law to provide for additional requirements for an initiative petition.

Consolidated Primary Election Ballot (H. 3247, Rep. Cromer). Current law requires the State Election Commission and county election commissions to prepare separate ballots for each political party holding a primary; persons deciding to vote in a primary must choose one or the other party's ballot. This prohibits, for example, a person from voting for a Democratic candidate for governor in the primary and then voting for a Republican candidate for lieutenant governor. This bill, however, would require the Election Commission and the county election commissions to prepare a consolidated ballot for the primary, on which a voter could vote in the primary of his choice for each office to be filled (for example, a voter could decide to cast a vote for one of several Democrats running for governor and also could cast a vote for one of several Republicans running for lieutenant governor).

Recall and Removal of Elected or Appointed State or Local Government Officials (H. 3248, Rep. Davenport). This is a proposed constitutional amendment which would allow voters to recall and remove from office anyone elected or appointed to public office in the executive or legislative branch of state or local government.

Recall and Removal of Elected State or Local Government Officials (H. 3249, Rep. Davenport). This is a proposed constitutional amendment which would allow



## **Legislative Update, January 17, 1995**

voters to recall and remove from office anyone elected to public office in the executive or legislative branch of South Carolina state or local government.

**Responsible Parenting Act of 1995** (H. 3251, Rep. McElveen). This bill requires the mother and (if living in the same home) the father of a family qualified to receive AFDC (Aid to Families with Dependent Children), before such benefits may be received, to be counseled on the responsibilities of parenthood and on options for controlling a family size (including abstinence and birth control). From the time of enactment of this bill, AFDC payments to an individual or family must be based on family size at the time of initial application for AFDC. Benefits for families or individuals receiving AFDC or who applied for these benefits between January 1, 1995 and the effective date of this act are to be based on family size as of the last certification before the act's effective date (in the first instance) and on verified family size in the application (in the latter instance). Under no circumstance may benefits be increased due to additional children or family size while AFDC is received.

The bill further provides that a family who discontinues receiving AFDC benefits but subsequently reapplies for benefits cannot include any more children in family size for resumption of AFDC benefits than were included in the family size at the time benefits were discontinued, unless the family did not receive these benefits for at least 24 months. However, a child not included in family size for purpose of determining the amount of AFDC benefits may receive Medicaid if the child otherwise is entitled.

**Owner of Dwelling Unit May Not Install Security Measures Which Would Hinder Exit in Cases of Fire** (H. 3252, Rep. Whipper). This bill prohibits the owner of a rental dwelling unit, or structure in which the unit is located, from installing a security measure which would hinder the exit of a person from the dwelling unit in case of a fire. The owner must ensure all exits to the dwelling unit or structure are easily accessible. Violation of these provisions is a misdemeanor, punishable upon conviction by a fine not exceeding \$500 and imprisonment not exceeding 1 year.

## **LABOR, COMMERCE AND INDUSTRY**

**Service Stations and Convenience Stores Selling Gasoline and Food Must Provide Public Restroom** (H. 3024, Rep. J. Brown). This bill requires a service station or convenience store which sells gasoline and food or beverages to provide a public restroom.

**Apartment Renters Entitled to Clear Access to Free, Noncable Television Channels without Payment of Charge for such Access** (H. 3030, Rep. Vaughn). This bill requires any owner of at least 4 rental apartment units at one location who does not permit renters at the location to install outside antennas for personal TV channel reception to ensure that the renters receive clear access to all the free, non-cable TV channels available to persons residing in that area, without the necessity of renters having to pay a fee or charge for such access



## **Legislative Update, January 17, 1995**

(including, but not limited to, fees or charges collected by a cable television franchise for providing free-channel or other reception).

**Health Insurance Policies Must Include Coverage for Mammograms, Pap Smears and Other Medical Services** (H. 3031, Rep. L. Whipper). This bill requires accident and health or health insurance policies issued after December of 1996 to include coverage for mammograms and pap smears and prostate cancer examinations, screenings and diagnostic lab work. This coverage cannot contain any exclusions, reductions or other limitations as to coverages, deductibles or coinsurance provisions applying to that coverage unless these provisions apply generally to other similar benefits provided or paid for under the accident or health insurance policy. The legislation lists minimum requirements for examinations under these policies (for example, mammogram examinations may be made at least once every two years for a woman in her 40s, while pap smears may be made once a year or more).

**Consumer Credit Reporting Agencies Must Accurately Report Information** (H. 3032, Rep. L. Whipper). This bill requires a consumer credit reporting agency which compiles and provides information on consumers obtained from public records to verify and update such information contained in the report before its release. If the agency inaccurately reports information obtained from public records because of failure to verify and update the information before releasing a report, then it is liable for actual and punitive damages and attorney's fees (in cases of wilful noncompliance) or liable for actual damages and attorney's fees (in cases in negligent noncompliance).

**Insurers May Not Cancel a Homeowner's Insurance Policy After Mortgage Loan Has Been Approved** (H. 3040, Rep. Scott). This bill prohibits an insurer authorized to do business in South Carolina from canceling a homeowner's insurance policy after a mortgage loan has been approved (with respect to property that is the subject of that loan) for 1 year commencing from the date the policy was issued. Additionally, the insurer may not cancel any existing homeowner's insurance policy on property already owned by the person who has applied for the mortgage loan under these provisions with respect to newly-acquired property. Any insurer violating these provisions must have their license to do business in this state suspended for 6 months, with this penalty in addition to other penalties provided by law for such action of the insurer. These provisions are not to be construed as limiting or superseding the right of the property owner or the mortgage loan applicant to bring a civil action for damages against the insurer.

**Out-of-State Contractors Must Pay Same Contractor Taxes Imposed by Their States on South Carolina Contractors** (H. 3041, Rep. Kirsh). This bill requires out-of-state persons who perform general or mechanical contracting work in South Carolina to pay to the South Carolina State Licensing Board for Contractors the same contractor registration, licensing or certification fees and privilege taxes or fees that are imposed on South Carolina resident general contractors or mechanical contractors who perform contracting work in that person's state.



## Legislative Update, January 17, 1995

**Affidavit of Financial Condition Required to License a Contractor (H. 3042, Rep. Kirsh).** This bill requires a contractor seeking a professional license to file an affidavit of his (the contractor's) financial condition, instead of furnishing a financial statement certified by a certified public accountant or a public accountant, with the State Licensing Board for Contractors.

**Community Reinvestment Act (H. 3043, Rep. Scott).** This bill, identical to one introduced last session (H. 4528), is designed to strengthen the capacity of banks to meet the credit needs of communities, serving specific objectives such as providing credit for low and moderate income families in urban and rural areas and for small farmers and small businesses, and clarifying standards for evaluating the community reinvestment performance of banks. The bill creates a 7-member Community Reinvestment Board, appointed by the General Assembly, and authorizes the board to hire a director and any staff necessary to fulfill the requirements of these provisions. This board is required to assess the record of a bank in meeting the credit needs of an entire community, including low and moderate income neighborhoods. If a bank applies under these provisions to move an office or branch location, merge with another bank or engage in other activities, the board must consider the bank's record in meeting community needs and may deny the application or condition its approval on grounds of meeting these community credit needs. In rating a bank's record of meeting these needs, the board must give a rating of "outstanding"; "satisfactory"; "needs improvement"; or "substantial noncompliance". The bill lists factors the board must consider in evaluating whether a bank is meeting community credit needs. After evaluating banks, the board must send a list of the banks and their ratings to the State Treasurer, with the recommendation that the treasurer only deposit funds in banks which receive a board rating of "outstanding" or "satisfactory."

The bill also requires each bank on an annual basis to delineate the local community or communities which it serves. Under these provisions, a community must include a contiguous area surrounding each bank office or branch and must include any low or moderate income areas in the contiguous areas. Additionally, the board of directors or trustees of each bank must adopt a community reinvestment statement for each delineated community. This statement, among other requirements, must include information pertaining to types of credit the institution is prepared to extend within its community and efforts to ascertain the credit needs of the community. A bank's community reinvestment statement must be made available for public inspection at the bank's head office and at each office in the delineated community.

**Percentage of Methanol Contained in Motor Fuel Offered for Sale Must Be Labeled (H. 3045, Rep. Kirsh).** This bill requires retail dealers to affix a legible statement of the percentage of ethanol, methanol or combination thereof to the dispenser of all motor fuel kept, offered or exposed for sale or sold for retail, provided that the motor fuel consists at least 2 percent by volume of ethanol, methanol, or combination of the two. A legible statement disclosing the percentage and type of alcohol included must be affixed to the front panel of the pump, clearly visible from the driver's position and readable at a reasonable distance from the pump. The bill specifies the size and color of the label and



## **Legislative Update, January 17, 1995**

does not prohibit additional alcohol or additive information from being voluntarily included on the label.

These provisions also grant to the Department of Agriculture the authority to inspect, sample and test products subject to these labeling requirements. For purposes of this legislation, a "retail dealer" is any person who owns, operates, controls or supervises an establishment at which motor fuel is sold or offered for sale to the public.

**Immediate Impoundment of Motor Vehicles Being Operated Without Insurance** (H. 3085, Rep. Cromer). This bill requires a law enforcement officer, upon determining that a motor vehicle subject to registration in South Carolina is being operated without insurance, to cause that uninsured vehicle to be impounded immediately. The vehicle may not be returned to the owner until he has paid the costs of the impoundment, any fines and fees for knowingly operating or allowing the operation of an uninsured motor vehicle, and has furnished proof of insurance to the Division of Motor Vehicles of the Department of Revenue and Taxation.

**No Long Distance Charges May Be Imposed on Telephone Calls Made Within Same County** (H. 3109, Rep. Kirsh). This bill would prohibit any telephone utility from imposing a long-distance charge on calls made between telephones in the same county after December of 1995. The bill also requires the Public Service Commission to authorize rate adjustments as necessary for these utilities to maintain the allowed rate of return following elimination of these long-distance charges.

**Mobile Home Retail Dealers Must Make Certain Certifications** (H. 3110, Rep. L. Whipper). This bill requires a mobile home retail dealer to certify to a person purchasing the home for placement on a lot within South Carolina that the lot specified by the purchaser as the site for the mobile home (1) meets applicable zoning requirements and (2) meets or can meet regulations of the Department of Health and Environmental Control governing wells and septic tanks (if the lot is to be served by either or both). If the contract of sale between the dealer and the purchaser does not include these 2 provisions, then the purchaser may void the contract without penalty. This legislation would apply to contracts of sale for mobile homes executed on or after July 1, 1995.

**Requirements for Consumer Leases for Automobiles** (H. 3117, Rep. Cato). This bill requires a lessor, when a person enters a consumer lease to lease an auto and pays the rental sales tax, to inform the consumer that if he purchases the auto at the end of the lease term, then he (the consumer) must pay the sales tax again at the end of the lease term.

**Confiscation of Motor Vehicle Registrations Certificates and License Plates** (H. 3123, Rep. R. Smith). This bill deletes provisions authorizing local law enforcement agencies to confiscate motor vehicle registration certificates and plates because of lapsed auto insurance and provisions, along with provisions pertaining to reinstatement fees, per diem fines, and penalties for operation of uninsured vehicles and failure to turn in registration and plates. The bill also deletes provisions requiring passenger vehicle owners or operators who have been



## Legislative Update, January 17, 1995

issued traffic tickets to send insurance verification forms to the local law enforcement agency which wrote the traffic ticket.

**Removal of Points from Person's Driving Record** (H. 3138, Rep. Inabinett). This bill requires any auto insurance premium increase imposed on a driver because of assessment of any points on his driving record to be eliminated when the points causing the increase are removed from his driving record.

**Investments of Banking Corporations in Real Estate Mortgages** (H. 3153, Rep. Vaughn). This bill would delete provisions in the State's banking laws that limits the amount of a banking corporation's capital stock and deposits which may be invested at any one time in real estate mortgages.

**Motor Vehicle Safety Responsibility Act** (H. 3157, Rep. Cromer). This bill is a measure to reform the state's auto insurance requirements. Under these provisions, a person may meet the state's minimum requirements for bodily injury or property damage liability coverage by obtaining such insurance; or through bond of a surety company; or by delivering cash and securities. The bill also allow sa person in whose name more than 25 vehicles are registered to obtain a certificate of self-insurance issued by the Department of Revenue and Taxation. Additionally, the Reinsurance Facility is abolished, and an Uninsured Motorists Fund is created; monies from the Fund must be distributed among insurers writing motor vehicle bodily injury and property damage liability coverage for vehicles registered in South Carolina. These monies are distributed in the proportion that each insurer's premium income for basic uninsured motorists limits coverage bears to total premium income for basic uninsured motorists limits coverage written in the state the preceding year. The bill also requires the Department to select on a daily basis a computerized random sample of 500 registered vehicles in this State and require the owners of such vehicles to return to the Department evidence of motor vehicle liability insurance coverage.

**Grounds for Eviction from Manufactured Home Park** (H. 3186, Rep. P. Harris). This bill deletes a provision allowing the owner of a manufactured home park to evict a resident because of the taking by eminent domain of all the park or a portion of the park which affects the resident's lot.

**Continuing Care Retirement Communities** (H. 3191, Rep. P. Harris). This bill imposes certain financial requirements on continuing care retirement communities, as follows:

---requires an operator of a continuing care retirement community to obtain the approval of the Department of Consumer Affairs before declaring or distributing a dividend or similar distribution. The department's approval must be given within 30 days from the date of the request unless it (the department) determines in writing that the distribution is not reasonable in relation to the operator's or facility's outstanding liabilities or would otherwise affect the financial soundness of the operator or the facility.

---allows the Department, if it has reason to believe the operator is insolvent or otherwise is in a financially unsound or unsafe condition, to



## Legislative Update, January 17, 1995

require the operator to submit for approval within 60 days a financial plan detailing the method by which the operator proposes to overcome the financial difficulties. If the Department approves the plan, the operator must immediately implement it, but if the Department disapproves the plan or determines after approval that it is not being fully implemented, it may require the operator to obtain new or additional management capability to solve its difficulties. Failure to implement the plan could result in suspension or revocation of the community's license.

---exempts continuing care communities which do not require payment of an entrance fee from certain licensing requirements pertaining to filing of financial statements and information.

---provides that for purposes of applying for a license to operate a continuing care retirement community, if the operator's fiscal year ended more than 120 days before the date the application for the license is filed (as currently opposed to 120 days before the date of disclosure of his financial statements), then interim financial statements of not more than 90 days before the date of filing the application must be included. Also requires that the license application include a summary of a report of an actuary if the continuing care contract provides for services for the life of the person or for more than 1 year, including mutually terminable contracts (currently the actuary report is required if the continuing care contract provides for services for a fixed fee for the life of a person or for more than 1 year, without any reference to mutually terminable contracts).

---in determining for granting of a license whether a continuing care retirement community is stable, revises the condition under which bond or other guarantee is required, to provide that a surety bond or other financial arrangement is required if the continuing care contract provides for services for the life of the person or for more than 1 year, including mutually terminable contracts.

Employers Must Grant Leave to Employees to Attend School Conferences (H. 3236, Rep. J. Brown). This legislation requires an employer to grant an employee leave from work not exceeding a total of 12 hours in any 12-month period to attend school conferences or activities related to the employee's dependent children or related to children for whom the employee is the legal guardian. This leave is to be granted only if the conference is requested and conducted by the child's school or day care center and cannot be scheduled during the employee's non-work hours. Upon returning to work following the conference or activity, the employee must present to the employer a statement signed by a school principal or other appropriate school or day care official verifying the date and time the conference took place and that the school or day care center had requested the employee's presence at the conference. No employer is required to provide paid leave for time taken by an employee to attend these conferences or activities.

Chief Insurance Commissioner to Recommend to General Assembly Legislative Changes that Will Encourage Operation of More Insurance Companies in State (H. 3242, Rep. Anderson). This joint resolution the Chief Insurance Commissioner to



## Legislative Update, January 17, 1995

undertake a study to determine statutory changes needed to encourage more insurance companies to do business in South Carolina, in such a manner as to foster broad-based competition in the marketplace and result in lower premiums for consumers. The commissioner must present his recommended legislative changes in a written report to the General Assembly by June 1, 1995.

### MEDICAL, MILITARY, PUBLIC AND MUNICIPAL AFFAIRS

Organ and Tissue Donor Program (H. 3023, Rep. Byrd). This bill establishes an Organ and Tissue Donor Program within the Department of Health and Environmental Control, with the purpose of this program being to provide education, information and referral services to promote organ and tissue donations. Also, the Department of Revenue and Taxation is required to offer persons obtaining or renewing a driver's license the opportunity to make a contribution of \$1 to the Organ and Tissue Donor program. This contribution would be added to the license fee and credited to a separate account in the State Treasurer's office, for use by DHEC in administering this program.

Fee Schedule for X-Ray Machines and Equipment (H. 3027, Rep. Simrill). This bill requires the Department of Health and Environmental Control to assess an annual registration fee for possession and use of x-ray machines and equipment and sets a fee schedule for such registrations (as examples, annual registration fees would be \$40 for radiographic x-ray equipment; \$50 for accelerators; and \$30 for baggage checkers.

Child Adoption by Persons Not Living in South Carolina (H. 3060, Rep. Vaughn). Current law, except in limited circumstances, requires anyone petitioning family court for purposes of adopting a child to be a resident of South Carolina. This bill would expand the circumstances under which an out-of-state resident could adopt a child from this state so as to allow such an adoption when the child has been in foster care for at least 6 months after having been legally freed for adoption and no resident of South Carolina has been identified as a prospective adoptive home.

South Carolina Cemetery Board (H. 3093, Rep. Cromer). This bill deletes the current "South Carolina Cemetery Act of 1984" and replaces it with a new "South Carolina Cemetery Act." While many of the provisions of the 1984 act (such as minimum cemetery size and record-keeping requirements) are included in this new act, there are also new features in the new act, as follows:

---Establishes the South Carolina Cemetery Board apart from the Secretary of State's Office. Enlarges the board from the current membership of 7 to 10, of whom 7 of the 10 members are appointed by the governor, and adds the Attorney General and Administrator of the Department of Consumer Affairs as ex-officio members of the board. Also increases from 2 to 4 the number of board members who must be owners or managers of cemeteries in South Carolina and adds to the board a member who is a monument dealer in South Carolina.

---Reduces from 2 years to 1 year the minimum experience a manager in the cemetery business must have for purposes of obtaining a license to establish a cemetery.



## Legislative Update, January 17, 1995

---Expands the powers and duties of the Cemetery Board so that it may investigate actions of a person engaged in the business or acting in the capacity of a licensee. Allows the Board to revoke or suspend a license for up to 2 years or until compliance with a lawful order imposed in the final order of suspension, or both, if the licensee violates various provisions (e.g., fails to pay required fees, fails to make required reports, acts in a manner which constitutes fraud or dishonest dealing).

---Allows the Board to enter into a written compliance agreement requiring a cemetery or its offices or owners to fund a discovered shortage in the cemetery's care and maintenance trust fund within a certain time in the board's discretion (with the time not exceeding 2 years after discovery of the shortage).

---Provides that the Administrative Procedures Act applies to proceedings under this act for revocation or suspension of licenses.

---Provides that records of complaints compiled by owners of perpetual care cemeteries must be available for examination by the chairman or other authorized member of the Board (as currently opposed to "examination by a representative of the board").

---Prohibits the owner of a cemetery from adopting certain regulations pertaining to an owner's or purchaser's purchase of a monument. (As examples, the cemetery owner may not adopt regulations which require the lot owner or purchaser to purchase a monument or marker or the actual installation of a monument or marker from the cemetery company, or which discriminate against an owner or purchaser who has purchased a monument or services related to installation of a monument from a vendor.) Requires cemetery regulations to be posed conspicuously and maintained, subject to inspection, at the usual place for transacting regular business of the cemetery.

---Requires the cemetery, when selling a lot, to disclose on the sales contract cemetery services for which there may be a later charge, and requires a cemetery company selling a monument, marker or memorial to provide on the sales contract an itemized statement of fees charged for installation, care and maintenance of it.

---Requires the Board, not later than 1 year after this act's effective date and periodically thereafter at its discretion, to complete a formal study to determine whether the amounts required under these provisions to be placed in a cemetery's care and maintenance trust fund are adequate to continue to provide perpetual care in a cemetery after all grave spaces are sold. The board's findings and recommendations are to be reported to the Governor and General Assembly.

---Provides any cemetery company established between July 1991 and the effective date of this new act can continue to operate and must be granted a license by the Board so long as the act's trust fund requirements have been met; beginning with the act's effective date, however, such cemetery companies must be operated in accordance with the act's provisions.

---Requires the Board's programs, functions and regulations to be terminated pursuant to the state's statutory law on review of state agencies and on June 30 of the year 2000, unless reauthorized according to law.

**Licensed Child Day Care Facilities Must Provide Proof of Conformance with Local Zoning Ordinances** (H. 3106, Rep. Shissias). This bill requires a child day care facility, at the time of its initial licensing, approval or registration,



## Legislative Update, January 17, 1995

to provide proof to the Department of Social Services (DSS) of conformity or authorized nonconformity with county or municipal zoning ordinances or resolutions. The bill also allows DSS to impose conditions on the license, approval or registration, consistent with restrictions imposed by zoning authorities, and deletes an obsolete reference pertaining to extensions of provisional registrations, provisional licenses and provisional approval for child day care facilities.

Chief Must Provide for Compensation of Reserve Police Officers (H. 3135, Rep. Hodges). Current South Carolina law allow a police chief to appoint reserve police officers as needed, provided the number of reserves does not exceed the number of regular full-time officers of his police department. This bill would require the police chief, with the approval of the municipality, to provide for the compensation of reserve police officers.

Reimbursement for Expenses of Governing Body of Special Purpose or Public Service District (H. 3141, Rep. Neilson). This bill allows the governing body of a public service district or a special purpose district to set, by resolution or ordinance, the amount of per diem for the body's members, deleting a current law limiting per diem for a member of the governing body to a maximum of \$35/day. The bill also deletes a provision limiting the insurance benefits of the governing body to those provided for state employees and provides that members are to be reimbursed for expenses actually incurred while on official business, with reimbursement not to exceed amounts authorized for members of state boards, committees and commissions.

Department of Corrections May Not Provide Exercise Equipment for Prisoners (H. 3154, Rep. Lanford). This bill would prohibit the Department of Corrections from providing or permitting exercise equipment (i.e., free weights, machines) for use by prisoners. Any such equipment owned by the Department must be donated to law enforcement agencies in South Carolina in the manner as provided by the General Assembly. Furthermore, any such equipment not owned by the Department but located in its facilities must be returned to the owner within 30 days of the effective date of these provisions.

Disinfection/Disposal of Certain Materials Left at Scene of Accident (H. 3176, Rep. Govan). This bill requires the governmental entity responsible for maintenance of public property where an accident or crime has occurred to disinfect and dispose of blood, body fluids or body tissue left from the accident or crime scene, with this being done as soon as practicable following conclusion of the investigation of the accident or search of the crime scene. These disinfecting and disposal activities must be conducted pursuant to recommendations of the Department of Health and Environmental Control.

Law Enforcement Agency Investigating Scene of Accident or Crime Must Notify Property Owners or Occupants of Certain Materials Left on Property (H. 3177, Rep. Govan). This bill requires the law enforcement agency having original jurisdiction for investigation of the scene of an accident or crime where blood, body fluids or body tissue from the accident or crime remain on private property to notify in writing the property owners or occupants that those materials remain



## Legislative Update, January 17, 1995

on the property and that the Department of Health and Environmental Control may be contacted for information on the proper treatment and disposal of the materials. The bill also exempts from liability any law enforcement agency or officer or any state or local governmental officer, employee, agency or entity for acts or omissions committed under these provisions, provided that the acts or omissions were committed in good faith and do not constitute gross negligence, recklessness, wilfulness or wantonness.

Consent Required to Use Body Parts Removed During Autopsies for Organ or Tissue Donation (H. 3182, Rep. L. Whipper). This bill prohibits body parts removed during an autopsy or post-mortem examination from being used for purposes of organ or tissue donations unless permission for such donation was obtained from the decedent or an authorized party. Additionally, prior to consenting to removal of a decedent's body parts for such purposes, the person must receive counseling and a statement of the organs or tissue to be removed, along with the purpose for which the organs or tissues are proposed to be used.

"Vulnerable" Adults Cannot Be Considered Abused or Neglected if Furnished Nonmedical Remedial Treatment through Spiritual Means (H. 3185, Rep. P. Harris). This legislation states that a vulnerable adult cannot be considered abused or neglected for the sole reason that, in lieu of medical treatment, he is being furnished non-medical remedial treatment by spiritual means through prayer alone, which he has practiced in accordance with the tenets and practice of a recognized church or religious denomination.

Eldercare Trust Fund Monies and Disbursements (H. 3189, Rep. P. Harris). This bill provides that assets of the Eldercare Trust Fund and all earnings from money in the Trust Fund are available for disbursement after allowances for operating expenses. (Currently, all assets of this trust fund are available for disbursement only if the assets exceed \$5 million; if assets are that amount or less, only a maximum of 75 percent of the assets of the Fund are available for disbursement.) Assets in the Fund which have been held prior to this change must now be released for disbursement pursuant to this "100 percent" disbursement requirement.

Advisory Council on Aging (H. 3190, Rep. P. Harris). This bill changes the name of the "Advisory Commission on Aging" to the "Advisory Council on Aging" and revises the membership of the council to include 1 member each from the 10 planning and service districts under the Division on Aging and 5 members from the state at large. (Currently this advisory body consists of 7 members---1 from each of the state's congressional districts, appointed by the governor with the advice and consent of the Senate, and 1 appointed at-large by the governor). Nominations may be sent to the director of the Division on Aging, from which the governor appoints members of the Council upon the advice and consent of the Senate. Members of the Council would serve staggered 4-year terms. The bill also revises criteria for appointments to this advisory council, to provide that the council be composed of appointees who are diverse in age, who are able and disabled, and who are active leaders in organizations and institutions that represent different concerns of older citizens and their families.



## **Legislative Update, January 17, 1995**

The bill also deletes a provision which entitles members of this advisory body to per diem and requires the Council to adopt rules and procedures for governance of its operations and activities.

**State Health Plan to Address Impact of Care and Treatment of Patients with Alzheimer's Disease and Related Disorders** (H. 3192, Rep. P. Harris). Current law requires the State Health Plan to address and include projections and standards for specified health services and equipment which potentially could have a substantial impact on health care cost and accessibility. This bill would require the impact of the care and treatment of patients with Alzheimer's disease and related disorders to be considered in developing these projections and standards.

**Division on Aging To Provide Members of General Assembly Certain Information** (H. 3206, Rep. P. Harris). This joint resolution directs the Division on Aging of the Office of the Governor to provide information to legislators on resource development activities and corporate efforts in members' districts that are generating support for activities for the upcoming (May 1995) White House Conference on Aging and for scholarships for elderly delegates in need of financial assistance to attend. Legislators, when possible, must encourage and promote the development of these activities and efforts. The Division on Aging also must distribute information and recommendations generated from this White House Conference and the March, 1995 State Conference on Aging in Myrtle Beach to legislators for their use and consideration when developing future aging policy and legislation.

**Requirements for Placement of Emotionally-Disturbed Children in Substitute Care Settings** (H. 3207, Rep. P. Harris). This bill requires, except in limited circumstances, all emotionally disturbed children considered for placement in a substitute care setting outside South Carolina to be referred to the Children's Case Resolution System. No child can be placed in a substitute care setting outside this state without written explanation in the child's records by the involved agencies. This explanation at a minimum must include which services have been utilized within South Carolina and which resources have been secured outside the State that are not available within South Carolina. However, the child's case is not required to be referred to the Children's Case Resolution System if the appropriate substitute care setting is located outside South Carolina but within 50 miles of the state line and is closer to a child's home than an appropriate setting in South Carolina.

**Appointment of Consumer Advisory Boards Within Department of Disabilities and Special Needs** (H. 3208, Rep. P. Harris). This bill requires the Commission on Disabilities and Special Needs, instead of the governor, to appoint a 7-member consumer advisory board for each of its divisions. Additionally, in making these appointments, the Commission must (as currently opposed to "should") consider demographic factors to ensure inclusion and representation on these committees. The bill also deletes provisions which entitle members of the Commission to subsistence, mileage and per diem.

**Requirements for Program To Provide Support for Individuals with Disabilities and Their Families** (H. 3210, Rep. P. Harris). This bill requires



## Legislative Update, January 17, 1995

members of the Human Services Coordinating Council to create individual and family support programs, a coordinated system of support services administered by council members or through contacts with private not-for-profit agencies, private-for-profit agencies, or governmental agencies within the state, or both. The programs are designed to help individuals with disabilities likely to last indefinitely; individuals with disabilities who choose to live with their families; and families with children with disabilities age 21 and younger. The bill lists principles to be used as guidelines when developing family support for individuals with disabilities and their families. The Council also on an annual basis must submit by the first day of the legislative session to the governor and various other officials a state plan to coordinate, enhance and expand individual and family support services using resources currently available within the department and other resources as appropriate. The bill lists goals which must be included in this plan.

**DHEC Must Conduct Study on Need for Specific Licensing Criteria for Health Care Facilities Providing Special Care Units for Alzheimer's Patients** (H. 3212, Rep. P. Harris). This joint resolution requires the Department of Health and Environmental Control (DHEC) to study whether there is a need for specific licensing criteria for health care facilities which provide special care units for Alzheimer's patients and other specialized programs for individuals with this disease and other related disorders. DHEC, in conducting this study, must consult with the Alzheimer's Disease and Related Disorders Resource Center, the Governor's Office Division on Aging, and representatives of homes for the aging and the nursing home industry. DHEC must submit a report, including its findings and recommendations, to the Joint Legislative Committee on Aging before January 1, 1996.

**Requirements for Renewing Professional Licenses of Funeral Directors and Embalmers** (H. 3232, Rep. J. Brown). This bill lists requirements which must be met in order for the State Board of Funeral Service to renew a lapsed professional license of a funeral director or embalmer. Under these provisions, the professional license must be renewed if the person previously held a valid license subject to renewal which has not been suspended or revoked; has not been convicted of a violent crime, felony, or crime of moral turpitude; pays a \$200 fee for each license and pays the current year license fee; completes the required continuing education hours for previous and current license years; and passes a written exam pertaining to funeral directing and embalming as administered by the Board.

## RULES

**Meetings of Legislative Caucuses Must Be Open to the Public** (H. 3048, Rep. Cromer). This House Resolution amends the House rules to prohibit legislative caucus meetings from being closed to the public and requiring them to be open pursuant to the state's Freedom of Information Act. (State law defines a "legislative caucus" as (1) a House or Senate committee controlled by the caucus of a political party or a caucus based on racial or ethnic affinity, or gender;



## Legislative Update, January 17, 1995

or (2) a party or group of either the House or Senate based on racial or ethnic affinity or gender.) NOTE: This House Resolution was adopted by the House on Thursday, January 12.

Staff Director of Legislative Black Caucus May Be Admitted to Floor of House of Representatives (H. 3049, Rep. J. Brown). This House Resolution would amend the House rules to permit the staff director of the Legislative Black Caucus to be admitted to the floor (i.e., within the chamber) of the House of Representatives at any time.

Summaries Required of Bills and Joint Resolutions Reported out of House Committees (H. 3050, Rep. Kirsh). This House Resolution would amend the House Rules to require any bill or resolution reported out of a House standing committee to include in the committee report a summary of the bill or resolution, with the summary prepared by the committee's staff.

House of Representatives May Not Meet Between Midnight and 8 a.m. (H. 3076, Rep. Cato). This House Resolution would amend the House rules to prohibit the House from meeting on any legislative day between Midnight and 8:00 a.m., unless the rule is suspended by a two-thirds vote of those House members present and voting.

Bills or Joint Resolutions Imposing New Taxes Require Approval by Supermajority of House (H. 3222, Rep. Kirsh). This House Resolution would amend the House rules to require any bill or joint resolution imposing a new tax affecting more than half the state's population to receive (on second reading) approval of at least two-thirds of the House membership.

## WAYS AND MEANS

Principal Amount of Lease Purchase or Financing Agreement Subject to Constitutional Debt Limit of 8% for Political Subdivisions (H. 3002, Rep. Koon). This bill prohibits any of the State's political subdivisions (e.g., municipalities, counties, school districts) from entering into a financial agreement (other than enterprise financial agreements) if the principal balance of the financing agreement, when added to the principal amount of limited bonded indebtedness outstanding on the date of execution of the financing agreement, exceeds 8 percent of the assessed value of taxable value of the political subdivision. However, political subdivisions may exceed the 8 percent limit if the financing agreement is approved by a majority of the entity's voters in a referendum. Additionally, if a political subdivision has outstanding any financing agreement (other than an enterprise financing agreement) on the date of issuance of any bonded indebtedness pursuant to any bond act, then the amount of this limited bonded indebtedness plus the amount of all other limited bonded indebtedness of the entity (when added to the principal balance under any financing agreement(s) of the entity) cannot exceed the amount of the entity's constitutional debt limit unless approved by voters in a referendum. The bill also provides that a payment made by the State pursuant to a financing agreement



### Legislative Update, January 17, 1995

is deemed general obligation debt subject to the State Constitution's debt service limitation.

For purposes of this bill, a "financing agreement" is a contract entered into after 1995 under the terms of which a governmental entity acquires use of an asset which provides for payments to be in more than 1 fiscal year; that payments thereunder are divided into principal and interest components; and that title to the asset will be in the name of or be transferred to the governmental entity if payment scheduled or provided for in the financing agreement are made (though this term excludes contracts entered into in connection with issues of general obligation or revenue bonds pursuant to the Constitution). An "enterprise financing agreement" is one entered into to provide an asset for a governmental enterprise, revenues from which are expected to be sufficient to pay amounts due under the agreement.

**Appropriation to Ensure Future Operation of State's Military Bases (H. 3003, Rep. McElveen).** This joint resolution would appropriate \$1.5 million in surplus revenues from the State's 1993-1994 general fund to the Office of Local Government of the State Budget and Control Board for activities to ensure that military bases and any other national defense facilities are not adversely impacted by the federal Defense Base Closure and Realignment Act of 1990. Any unexpended funds from this appropriation would lapse to the State's general fund when the board determines that the funds are no longer needed.

**Income Tax Credit for Property Tax Relief Act (H. 3022, Rep. Scott).** This is identical to legislation introduced during the 1994 session (H. 4684) to permit households earning less than \$25,000 yearly and who are eligible to claim a homestead exemption to claim a state income tax credit for a percentage of property taxes accrued during the preceding calendar year. Only 1 person, or claimant, per household may file for the credit in a year, and the amount of the credit may not exceed \$250. If the allowable amount of the claim exceeds the income taxes due on claimant's income, then the amount of the claim not used to offset income taxes must be paid to the claimant. The amount of credit a claimant may claim is determined as listed in the table immediately below:

<u>If Gross Yearly Household Income Is:</u>	<u>Then Taxpayer May Obtain Credit for Property Tax Paid in Excess of This Per- centage of Income:</u>
\$0-----9,999	1 Percent
\$10,000---14,999	1.5 Percent
\$15,000---19,999	2 Percent
\$20,000---24,999	2.25 Percent

A claim must be disallowed if the Department of Revenue and Taxation finds that the claimant received title to his homestead primarily for the purpose of receiving this tax credit. The right to file a claim does not survive the claimant's death, but if a claimant dies after having filed a timely claim, then the amount of the claim must be disbursed to another member of his household, or



## **Legislative Update, January 17, 1995**

to his personal representative if the claimant was the only member of the household. If these provisions are adopted, they would apply to tax years beginning after 1995.

**Use of Revenues from Local Sales and Use Tax** (H. 3029, Rep. Vaughn). This bill deletes the definition of "minimum distribution" pursuant to revenues from the local option sales and use tax and provides that this tax revenue distributed to a county or municipality must be used in the first year to provide an additional property tax credit and thereafter may by ordinance be used for other purposes. The legislation provides, however, that the ordinance may not reduce the percentage of total revenues used for property tax credit in a county by more than 10 percent over the percentage used for credit in the preceding year and not more than 29 percent cumulatively. Furthermore, the ordinance cannot reduce the percentage used for the property tax credit more than 15 percent in any 2 consecutive years. The bill also deletes a provision which requires withholding of certain amounts of this local option tax (for purposes or redistribution to other counties) with respect to counties imposing this tax after June of 1995 and provides a transition period for phasing out this redistribution requirement for counties currently imposing this tax, such that withholding for redistribution purposes would cease after June 30 of the year 2000.

**Homestead Exemption Increased to \$30,000** (H. 3035, Rep. Simrill). This bill would increase the homestead exemption from the first \$20,000 of fair market value to the first \$30,000.

**Property Tax Exemption from Increases in Fair Market Value** (H. 3038, Rep. Harvin). This bill provides a property tax exemption for the amount of fair market value of residential real property equal to increases in such value resulting from reassessments occurring while the current owner has owned the property. The exemption, however, does not extend to increases in fair market value attributable to permanent improvements. If adopted, this legislation would apply to increases in fair market value occurring for tax years after 1994.

**Budget and Control Board Must Submit Regulations to General Assembly Providing for Privatization of Contractual Services for State Government** (H. 3046, Rep. L. Whipper). This bill requires the State Budget and Control Board to promulgate regulations concerning the privatization of state government service, addressing such matters as a cost comparison of government and nongovernment service provider before letting of a contract, uniform rules for procurement of contractual services for all state agencies, and determination of the need for continuous government regulations of certain services. These regulations must be promulgated within 180 days following the effective date of this legislation.

**South Carolina Gaming and Economic Development Act** (H. 3059, Rep. Scott). This bill is designed to regulate the establishment, licensure and operation of dockside gaming facilities (i.e., facilities built on navigable water to conduct wagering games such as poker, video games, etc.) This legislation is identical to a bill introduced last session (H. 4853) to regulate dockside gaming.



## Legislative Update, January 17, 1995

In order to regulate these facilities, the bill creates a South Carolina Gaming Commission, consisting of 5 members appointed by the governor with the advice and consent of the Senate. Members would serve staggered 4-year terms, with 1 member designated by the governor as chairman. Commission members would be required to have a reasonable knowledge of the practice, procedure and principles of gaming operations and may not be removed by the governor except for cause. No person may be appointed to the commission, or continue to serve on the commission, if the person is not of "good moral character," is under indictment or has been convicted of a felony; or if the person, his child, spouse or parent is employed by a member of the board of directors of or financially interested in any gaming operation subject to the jurisdiction of the commission. Before taking the duties of a commission member, a person must give bond to the State in the sum of \$25,000. The bill provides for the compensation and meetings of the commission and also requires the commission, with the approval and consultation of the governor and the advice and consent of the Senate, to employ an executive director.

The bill also lists the powers and duties of the Commission. Among other powers and duties, the Commission must exercise jurisdiction over and supervise all dockside gaming facilities (hereafter called "facility"), along with games and persons at these facilities; investigate applicants for licenses issued under these provisions; eject or exclude persons from these facilities under specified circumstances; require persons involved in the ownership and management of a facility to submit financial statements; and employ agents, consultants and other employees and determine their duties and compensation. The Commission may seek and must receive the cooperation of the State Law Enforcement Division (SLED) in conducting background investigations of applicants for licenses issued under these provisions and in enforcing these provisions. The bill also lists information concerning an applicant or licensee which is open to public inspection.

Any person seeking to conduct games at a dockside gaming facility must first obtain a gaming license from the Commission. No more than 6 gaming licenses may be issued in the State, and these licenses may only be issued in Charleston, Horry, Jasper, Orangeburg and Richland Counties. No more than 2 facilities may be located in any 1 county. Before gaming licenses may be issued in those counties, a referendum must be held in the county (or, if the facility is to be located in a municipality, the referendum must be held there) authorizing the facility to be so located. An applicant for a gaming license must submit a nonrefundable application fee of \$100,000, which is used to defray the costs of conducting a background investigation on the applicant and processing the application. If these costs exceed the \$100,000 fee, then the applicant must pay the additional amount. The applicant also must pay a nonrefundable fee set by SLED by regulation to defray the costs associated with the search and classification of the fingerprints obtained by the Commission as pertains to the gaming license application. The bill lists information which must be included in the application and prohibits the Commission from issuing a gaming license if, among other things, the applicant has been convicted of a felony, is a member of the Commission, or has not committed to a capital investment of at least \$75 million. The bill lists factors the Commission must consider in determining



### Legislative Update, January 17, 1995

whether to issue a gaming license to an applicant and requires the Commission to give added weight to a gaming license application that proposes to locate in an economically-depressed area or to provide for significant economic development over a large geographic area. If the Commission decides to award a gaming license, the licensee must pay a license fee of \$25,000 for the first year of operation to the Commission before the licensee may receive the license. The annual renewal fee for a gaming license is \$10,000. No person may manage more than 2 facilities. Within 30 days after issuance of a license, the licensee must post bond in the sum of \$200,000 to the State, to be used to guarantee that the licensee makes payments and reports, keeps books and records, and conducts games in conformity with these provisions.

This legislation requires gaming licensees, among other things, to set the minimum and maximum wagers on games and allow SLED agents and the Commission to inspect these facilities at any time to ensure compliance with these provisions. Gaming licensees may not receive wagers from anyone who is not present at a licensed facility and may not permit an employee under age 21 to perform any functions involved in gaming by patrons. All tokens, chips or electronic cards used to make wagers must be purchased from a gaming licensee at places on the facility approved by the Commission.

This legislation also requires anyone seeking to manufacture, sell or market gaming devices to first obtain a supplier's license. The bill lists information which must be included in this license and requires a nonrefundable application fee of \$50,000 to defray the costs of conducting a background investigation on the applicant. As is the case with gaming license applications, applicants for a supplier's license must pay any additional costs incurred by the Commission while conducting a background investigation. The applicant also must pay a nonrefundable fee set by SLED by regulation to defray costs associated with the search and classification of fingerprints obtained by the Commission pertaining to the supplier's license application. The bill lists factors the Commission must consider in determining whether to grant this license and lists conditions under which an applicant is ineligible for a license. If the Commission decides to grant a license to the applicant, then the licensee must pay a license fee of \$10,000 for the first year of operation to the Commission before receiving the license. In subsequent years, the supplier's license must be renewed annually at a cost of \$5,000. The Commission may determine the suitability, or may require the licensing, of any person who furnishes services or property to a gaming licensee under any arrangement pursuant to which the person receives payments based on earnings, profits or receipts from gaming. If the Commission determines that the person is unsuitable to be associated with a gaming licensee, then the association must be terminated. The bill lists factors the Commission must consider in making a finding of suitability.

The bill also requires the issuance of occupational licenses for persons to be employed at these facilities. The nonrefundable application fee for this license is \$50, except that if the license is for a person who is a chief executive, then the fee is \$250. The fee is used to defray costs associated with background investigations of applicants. And as for applications for gaming and supplier's licenses, applicants for an occupational license must pay a



### Legislative Update, January 17, 1995

nonrefundable fee set by SLED by regulation to defray costs associated with the search and fingerprints obtained by the Commission as pertains to the occupational license application. The bill lists conditions under which a person may not be awarded this license and provides that the license is valid for 1 year from the date of issuance.

Several taxes are imposed on licensees. Each gaming licensee, on an annual basis, must pay to the Commission a license fee of \$500 for each table game, slot machine or other gaming device at the licensee's facility. Revenues collected from these fees are deposited to the State's General Fund. Additionally, a 12 percent tax is imposed on the adjusted gross receipts received from games at facilities. The licensee must pay this tax to the Commission no later than the end of the next business day when the wagers were made. Seventy-five (75) percent of the revenue from this tax must be credited to the State's General Fund, with the remaining 25 percent remitted monthly by the Commission to the county where the facility is located (if the facility is located in an unincorporated part of the county); however, if the facility is located in a municipality, then 20 percent of the revenue is remitted to that municipality and the remaining 5 percent is remitted to the county where the facility is located. Gaming licensees are required to keep records which indicate the total amount of gross receipts and the total amount of adjusted gross receipts.

This legislation allows an administrative law judge to be designated, upon order of the Commission, to hear and decide any matter that the Commission may decide. The Commission may limit the role of the administrative law judge to that of fact-finding and making recommendations to the Commission.

The bill provides a number of criminal and civil penalties for various violations of these provisions. Operation of a facility without a gaming license is a misdemeanor punishable by imprisonment of up to 1 year and/or a fine not exceeding \$500, with each day of violation constituting a separate offense. The bill makes it a felony (punishable by imprisonment not exceeding 10 years, a fine not exceeding \$10,000, and exclusion from facilities for life) for a person to engage in several activities, including, as examples, the giving of anything of value or benefit to a person connected with a facility; the use of counterfeit chips or tokens in a game; the placing of a bet after acquiring knowledge (not available to all players) of the outcome of a game which is the subject of a bet; or evading, attempting to evade or failing to comply with payment of taxes imposed under these provisions.

Any person conducting a gaming operation without first obtaining a license, or who continues to conduct the games after revocation of the license, or any licensee who conducts or allows to be conducted unauthorized games at an authorized facility is subject to a civil penalty imposed by the Commission. The civil penalty, which is in addition to any other penalties provided by law, is equal to the amount of gross receipts derived from gaming, whether or not authorized, conducted on that day, along with confiscation and forfeiture of all slot machines, gaming devices and associated equipment used in conducting unauthorized games. The Commission also may impose civil penalties of up to \$5,000 against gaming employees; up to \$25,000 against suppliers; and up to



### **Legislative Update, January 17, 1995**

\$5,000 or an amount equal to the daily gross receipts, whichever is larger, against holders of a gaming license for each violation of these provisions, any regulation or order of the Commission, or any other action which in the Commission's discretion is a detriment or impediment to gaming operations.

The bill also requires the State Budget and Control Board to advance to the Commission a maximum of \$100,000 from the Civil Contingent Fund to provide start-up funds for implementation of these provisions.

**Formula Funding To Be Reduced for State-Supported Institutions of Higher Learning Which Accept Applicants Based on Gender (H. 3065, Rep. Byrd).** This bill requires the Commission on Higher Education each fiscal year to reduce the formula funding to state-supported institutions of higher learning which accept applicants based upon gender. Funding would be reduced in the following manner: The Commission would determine the number of applicants eliminated from consideration in a particular year at the institution and reduce the institution's formula funding for that year in direct proportion to the number of applicants disqualified at that institution. The funds then would be reserved to pay for educational expenditures of the applicants so rejected to attend any institution of higher learning in South Carolina which meets the applicant's curriculum needs.

**Maximum Retirement Income Which May Be Deducted from South Carolina Taxable Income Increased from \$3,000 to \$6,000 (H. 3082, Rep. Cromer).** Current law allows a person who begins to receive retirement income two options for purposes of deductions from state income tax---(1) deduct a maximum of \$3,000 in retirement income annually, or (2) defer claiming a retirement income tax deduction until age 65, at which time he can deduct annually a maximum of \$10,000. This bill would allow a person who chooses option #1 (the annual \$3,000 deduction) to subsequently increase that deduction to a maximum of \$6,000 annually upon reaching age 62.

**South Carolina Pre-Paid Post Secondary Education Expense Program (H. 3087, Rep. Cromer).** This bill creates the South Carolina Prepaid Postsecondary Education Expense Program, the purpose of which is to provide a medium through which the cost of tuition, fees and dormitory residence may be paid in advance of undergraduate enrollment in a state postsecondary institution (whether a college, university or technical college), at a rate lower than the projected corresponding cost at the time of enrollment. These payments would be combined and invested in a manner yielding sufficient interest to generate the difference between the prepaid amount and the cost of tuition/fees (hereafter called "registration") and dormitory residence at the time of actual registration. Students enrolling in a state post-secondary institution pursuant to these provisions could not be charged any fees in excess of the terms delineated in the advance program contract.

The bill establishes a 9-member board (named the "South Carolina Prepaid Postsecondary Education Expense Board") for the purpose of administering this program. Board membership includes the State Treasurer (as an ex-officio member) and 8 members appointed by the governor with the advice and consent of the



### Legislative Update, January 17, 1995

Senate. Of the gubernatorial members, 1 must be nominated by the Senate President Pro Tempore; 1 must be nominated by the Speaker of the House; 1 must be nominated by the Council of Presidents of State Institutions of Higher Learning; and 1 must be nominated by the Advisory Council on Private College Presidents. 4 other members must be nominated as well. Of the gubernatorial nominees, all but the ones appointed by the Speaker and Senate President Pro Tempore would serve 4-year terms (those nominated by the Speaker and Senate President Pro Tempore would serve coterminous with their respective appointing leaders). This board must appoint an executive director to serve as the board's chief administrative and operational officer and to perform other duties assigned to him by the board. The bill lists the powers of the board, which include, among others, investment of funds not required for immediate disbursement; requiring a reasonable length of state residency to qualify for this program; imposing reasonable time limits on use of this program's tuition benefits; and delineating terms under which payments may be withdrawn from the fund and imposing reasonable charges for such withdrawals.

The board, acting with approval of the State Budget and Control Board, must establish a comprehensive investment plan for this program. The plan must specify the investment policies to be utilized by the board in administering the fund. The board may place assets of the fund in savings accounts or use assets to purchase fixed or variable life insurance or annuity contracts, securities, evidence of indebtedness, or other investment products pursuant to the plan. Responsibility for administration of the investment plan may be delegated by the board to a person the board determines qualified. The bill also requires a report to be prepared each year which sets forth an accounting of the fund and a description of the financial condition of the program, with the report submitted to the Speaker of the House, Senate President Pro Tempore, the Budget and Control Board and to members of the Commission on Higher Education. The report also is to be made available to purchasers of advance payment contracts. The board also may establish a direct-support organization, operated to receive, hold, invest and administer property and make expenditures to of for the benefit of the program. The board also must contract for services of a records administrator (who will conduct the program's daily operations on behalf of the board); a trustee services firm (which selects and supervises investment programs on behalf of the board); and at least 1 product provider (which must develop investment portfolios on behalf of the board for the program's administration).

The board is responsible for developing advance payment contracts, the contents of which, among other things, must include the amount and number of payments to be remitted, any time limitations within which benefits of the program must be claimed, conditions under which a contract may be terminated and the amount (if any) of any refund due. The advance payment contract for registration must include the number of credit hours contracted by the purchaser; the state post-secondary institution toward which the credit hours will apply; and the board's assumption of a contractual obligation to provide the qualified beneficiary (i.e., the youth on whose behalf a purchaser makes these advance payments) a specified number of credit hours at a state post-secondary institution not exceeding the average number of such hours needed to obtain the degree corresponding to the plan purchased in the contract. At a minimum, the



### Legislative Update, January 17, 1995

board must make available advance payment contracts for 3 independent plans---(1) community college plan; (2) university plan; and (3) dormitory residence plan. The dormitory residence plan, which is optional, must provide prepaid housing fees for a minimum of 10 semesters and can only be purchased in conjunction with a university plan. The costs of the community college, university and dormitory residence plans must be based primarily on the average current and projected costs of the benefits provided in those respective plans and the number of years expected to lapse between purchase of the plan and the exercise of its benefits. The bill also allows any of these 3 independent plans to be applied to an independent college or university in South Carolina and lists conditions governing such applicability. Prepaid contracts also may be converted from one plan to another (e.g., university plan to community college plan).

The bill also lists minimum requirements governing refunds of advance payment contracts. As examples, no refund is authorized through this contract for a school year partially attended but not completed, but refunds with interest must be issued to the contract purchaser if the beneficiary is awarded a scholarship or dies or becomes totally disabled.

The bill requires the State to meet the board's obligation to beneficiaries if monies in the program's fund do not offset the board's obligations. Assets of the fund must be maintained, invested and expended solely for the purposes of the program and may not be loaned or otherwise used by the State for any other purpose. The State may discontinue the program if financially infeasible, although qualified beneficiaries accepted by and enrolled or within 5 years of enrollment in an eligible independent or state post-secondary institution is entitled to exercise the full benefits for which he has contracted; other contract holders would receive a refund with interest. A state income tax deduction is provided for the amount paid to purchase a community college or university advance payment plan and income attributable (for federal tax purposes) to a beneficiary from payment of tuition and fees by either of these contracts in the year the beneficiary's tuition is paid.

This legislation also specifies that purchase of these contracts is not to be construed as promising or guaranteeing that a person will be (1) admitted to a state postsecondary institution or a particular postsecondary institution; (2) allowed to continue enrollment at a state post-secondary institution after admission; or (3) graduated from a state postsecondary institution.

Property Tax Exemption for Motor Vehicles Older Than 10 Model Years (H. 3088, Rep. Cromer). This bill provides a property tax exemption for motor vehicles older than 10 model years, beginning with vehicle model years ending after June 30, 1995.

Salaries of any State Officer or Employee May Not Exceed \$80,000 Per Year (H. 3089, Rep. Cromer). This bill would prohibit any state officer or employee, with the exception of presidents of state institutions of higher learning, from receiving a salary in excess of \$80,000 yearly for performance of official duties. The bill also provides that in cases where a state officer is serving for a term of years during which the State Constitution prohibits reduction of the



## Legislative Update, January 17, 1995

officer's salary, then the \$80,000 salary limitation first applies to the succeeding term.

**No State Retirement Benefits May Be Paid to State Officers or Employees Convicted of Felonies Arising Out of Performance of Job** (H. 3092, Rep. Cromer; and H. 3108, Rep. Kirsh). These identical bills would prohibit any state retirement benefits from being paid to a state officer or employee convicted after June 1995 of a South Carolina or U.S. felony arising out of the performance of official duties. This ineligibility also extends to benefits which otherwise would be due the officer's or employee's surviving spouse or other beneficiary. However, when retirement benefits are denied under this provision, the amounts actually contributed or deposited by the individual (minus amounts previously refunded or paid as benefits) must be refunded to the individual (or, if deceased, to his beneficiary). These provisions apply to all (1) state employees first employed after June 1995, and (2) state officers elected or appointed for a specific term of office for terms commencing after June 1995.

**Order of Priorities Among Multiple Setoff Claims to Tax Refunds** (H. 3102, Rep. Shissias). This bill sets an order of priority for multiple claims filed for tax refunds allowed to be setoff. Under this bill, the order of priority for multiple claims filed (with #1 being the highest and #5 being the lowest) is as follows: (1) claims of the Tax Commission; (2) claims of the Division of Child Support Enforcement of the Department of Social Services; (3) other claims of DSS and other state agencies; (4) claims of the Internal Revenue Service and claims filed by institutions of higher learning; and (5) claims of other agencies not given a specific priority. Priority within a class in which multiple claims are filed is the order of time in which claimant agencies filed written notice with the commission of intent to effect collection through setoff. The order of priority for claims listed in this legislation would apply to refunds for tax years beginning after 1995.

**Prescription Eyeglass Lenses and Raw Materials Used in Making such Lenses Exempt from Sales Tax** (H. 3127, Rep. J. Brown). This bill would exempt from the state's Sales and Use Tax prescription eyeglass lenses and raw materials used in fabricating such lenses; this exemption, however, would not apply to eyeglass frames.

**Human Resources Coordinating Council Must Submit Plan for Training State Employees to Deliver Services in Certain Manner** (H. 3128, Rep. J. Brown). This joint resolution directs the Human Services Coordinating Council, in cooperation with the Budget and Control Board's Office of Human Resources, to submit to the General Assembly a plan for the training of employees of the state's health and human services agencies to deliver services in an efficient, cost-effective and cross-cultural manner. Reports to the General Assembly regarding implementation of this plan must begin on an annual basis by January 1, 1997.

**Prescription Orthotic Devices and Replacement Parts for Prescription Prosthetic and Orthotic Devices Exempt from Sales Tax** (H. 3130, Rep. J. Brown). This bill would exempt from the state's Sales and Use Tax prescription orthotic devices and replacement parts for prescription prosthetic and orthotic devices.



## Legislative Update, January 17, 1995

**Nonrecurring Revenues May Not Be Appropriated for Recurring Purpose** (H. 3139, Rep. Kirsh). This bill would prohibit the appropriation of nonrecurring revenues for a recurring purpose except upon approval of two-thirds of the total membership of the House and the Senate. Additionally, a nonrecurring appropriation enacted under this provision must include a statement which identifies the source of the nonrecurring revenue.

**Seller of Real Property Classified as Agricultural Must Notify Buyer that Property May Be Subject to Rollback Tax** (H. 3142, Rep. Neilson). This bill requires the seller of real property which for taxation purposes is classified as agricultural to notify the purchaser in writing no later than completion of closing that the property may be subject to the agricultural rollback tax. If the seller fails to provide such notification, then he is liable to the purchaser for the amount of this tax assessed to the purchaser resulting from change of use of the property.

**State Agencies May Not Expend General Fund Revenues in Excess of Amount Appropriated in Annual General or Supplemental Appropriations Acts** (H. 3147, Rep. Marchbanks). This bill prohibits any state agency from expending in a fiscal year funds in excess of the amount of general fund revenues appropriated for that agency in the annual general appropriations act or in a supplemental appropriations act. Furthermore, the State Budget and Control Board or any other state agency or officer may not transfer funds which violate this prohibition or authorize the expenditure of funds in excess of general fund revenues appropriated. Responsibility for compliance with these provisions rests with the agency head, who, if he knowingly allows a violation of this expenditure limit, is guilty of a misdemeanor (punishable upon conviction in the discretion of the court or by imprisonment of not more than 3 years). A conviction under these provisions constitutes malfeasance in office for purposes of collection on any surety bond required by law which guarantees proper performance of official duties.

The bill also specifies that these provisions can only be amended or repealed through separate legislation enacted specifically for such purpose, passed by a two-thirds vote of the total membership of each chamber (House and Senate) of the General Assembly.

**State Income Tax Deduction for Certain Retirement Benefits** (H. 3149, Rep. Waldrop). This bill allows a person to deduct for purposes of the state income tax retirement benefits received from a state or local government public employee pension plan of a state which imposed no state individual income tax when the pension was earned and which imposes no state individual income tax during the taxable year for which the deduction is claimed.

**Video Poker Licensing** (H. 3152, Rep. Knotts). Current law requires every video poker machine to be licensed by the Department of Revenue and Taxation, with the license fee being \$3,000 for a 2-year period. Additionally, current law allows a county to impose a license fee not exceeding \$300 on video poker machines located in unincorporated areas. This bill would delete the current provision allowing counties to impose license fees on these machines and would



## Legislative Update, January 17, 1995

require licenses issued by the Department to be granted for a location in a specific county, to be noted on the license. Once licensed, a machine could not moved out of the county during the licensing period except for servicing. This legislation also requires all revenues from license fees imposed on video poker machines to be remitted to the county for which the machine is licensed, with the funds used by the county governing body to roll back property taxes. This legislation would take effect May 1, 1995.

State General Appropriations Act To Be Enacted Biennially and To Be Developed Using "Zero-Base" Budget Process (H. 3160, Rep. Hutson). This bill would required the General Assembly, beginning in its 1996 session and continuing every 2 years thereafter, to enact a biennial state general appropriations act (i.e., a 2-year state budget---July 1996 through June 1998, July 1998 through June 2000, etc.). The bill also requires the Governor and General Assembly to use a "zero-base" budget process in preparing the biennial general appropriations act beginning in 1996.

Amounts Appropriated for Salaries of Drivers of State-Owned School Buses To Be Used Only for Such Purposes (H. 3162, Rep. Fulmer). This bill requires amounts appropriated for salaries of school bus drivers of state-owned buses to be used only for payment of those salaries, beginning with the next fiscal year (FY 1995-1996). These salaries cannot be reduced during the fiscal year, regardless of whether or not the State Budget and Control Board during that year mandates across-the-board or other reductions in state-appropriated expenditures. Also beginning with Fiscal Year 1995-1996, local supplements to salaries of school bus drivers may not be reduced below the supplements paid in the previous fiscal year.

Appropriation of Surplus General Fund Revenues for State House Renovation Project (H. 3167, Rep. Carnell). This joint resolution appropriates a maximum of \$38,787,632 in fiscal year 1993-1994 surplus general fund revenues to the Budget and Control Board's Division of General Services for the upcoming State House renovation project. The joint resolution also allows these funds to be carried forward into future fiscal years for this same purpose until the project has been completed or the funds have been expended.

Local Option Gasoline Tax (H. 3169, Rep. Govan). This bill would allow counties to impose an additional gasoline tax of 1 cent/gallon on gasoline sold at retail within the county for purposes of construction of new roads and/or maintenance of existing ones. Under these provisions, the governing body of a county would be ordinance impose the tax and state in the ordinance the purposes for which the extra tax revenue would be used (i.e., whether for new road construction, or maintenance, or both) and the maximum period (not to exceed 5 years) for which the tax may be imposed. Upon receipt of the ordinance, the county election commission would conduct a voter referendum on imposition of the tax, with the referendum conducted at the time of the general election (if the general election falls between 6 weeks and 6 months after enactment of the ordinance) or within 90 days after enactment of the ordinance .



## Legislative Update, January 17, 1995

If voters do not approve the extra tax, then the question cannot be resubmitted to the voters until 12 months after the preceding referendum. If the tax is approved, however, it is imposed on the first day of the second calendar quarter following the date of the referendum. If this tax is imposed for more than 1 purpose, the county governing body which authorized the referendum for the tax must determine the priority for expenditure of the net tax proceeds for the purposes stated in the referendum. No county may impose more than a 1 cent/gallon gasoline tax under these provisions. Revenue from this tax must be credited to a separate and newly-created fund in the State Treasury, with the revenues of the fund distributed quarterly by the State Treasurer to the county for the road purposes as stated in the referendum.

**Study of Costs/Benefits of Allowing Members of State Retirement System to Retire at any Age without Penalty Upon Attaining 25 Years' Service** (H. 3170, Rep. Govan). This joint resolution directs the Office of Human Resources and the Retirement Systems of the State Budget and Control Board to jointly conduct a study to determine the full costs and benefits of allowing members of the State Retirement System to retire at any age, without penalty, upon achieving a minimum of 25 years' creditable service. This study must address all actuarial issues raised by this proposal and review its potential benefits (such as any possible reductions in personnel expenses). These issues are to be addressed with respect to both state and local government employers under the system, and the study's findings and conclusions must be reported to the General Assembly by November 15, 1995.

**Homestead Exemption To Be Adjusted Annually To Offset Increases in the Consumer Price Index** (H. 3187, Rep. P. Harris). This bill requires the amount of the homestead exemption (currently \$20,000) to be adjusted annually to offset increases in the consumer price index (inflation). The calculation of the increase is to be made by the Comptroller General, who must notify county auditors of the adjusted exemption amount. This "inflation adjustment" must first be made for the exemption amount applicable for the 1996 tax year.

**Property Tax Exemptions** (H. 3188, Rep. P. Harris; H. 3216, Rep. Simrill).

These bills both provide a property tax exemption for the additional amount of fair market value (FMV) of property qualifying for the homestead exemption equal to increases in FMV occurring after the later of 1994 or the year after the property first qualifies for the homestead exemption. This exemption extends to increases in FMV attributable to routine maintenance performed on the property but does not extend to increases in FMV attributable to permanent improvements made to the property after it qualifies for the homestead exemption. If adopted, these bills would apply for tax years beginning after 1994 and FMV increases occurring after 1994.

The only difference between the two bills is that H. 3188, unlike H. 3216, requires the Comptroller General to reimburse counties and municipalities for taxes not collected because of this additional exemption (as currently is required for local taxes not collected because of the present \$20,000 homestead exemption).



## **Legislative Update, January 17, 1995**

**Income Tax Credits for Employers Establishing Adult Care Programs for Employees** (H. 3193, Rep. P. Harris). This bill provides a state income tax credit for an employer who establishes an adult care program for his employees. The tax credit is an amount equal to 50 percent of the employer's capital expenditures in South Carolina, but not more than \$100,000 for costs incurred in establishing the program. The employer also is allowed a tax credit in an amount not exceeding 50 percent of the adult care payments he incurs to operate the program for his employees or made directly to child care facilities for adult family members kept at the facility during the employee's working hours. This credit for operational costs cannot exceed \$3,000 for each employee if the employee receives payments for either child or adult family member care and \$6,000 if the employee receives payment for both. The credits offered under these provisions apply only to expenditures made after 1994.

**Property Tax Exemption for Religious, Charitable and Other Societies also Extends to Property Leased by These Organizations** (H. 3202, Rep. Scott). Current law provides a property tax exemption for property owned by any religious, charitable, eleemosynary, educational or literary society, corporation or other association when used primarily to conduct that organization's business and meetings. This bill would extend this property tax exemption also to property leased by these organizations for such purposes.

**Establishment of Historic Burial Ground Preservation Program Within Department of Archives and History** (H. 3220, Rep. Harvin). This bill requires the South Carolina Department of Archives and History to establish an Historic Burial Ground Preservation Program, for the purposes of increasing awareness of the significance of the states' historic cemeteries and educating the public about appropriate maintenance and restoration techniques through an audio-visual presentation. The Department must work with South Carolina ETV to produce this presentation and must ensure its availability to historical societies and other organizations in the state. Funding for this program must come from appropriations made by the General Assembly.

This legislation also requires the Department to develop a grants proposal for this program to assist efforts of private organizations and local governments to preserve and protect historic cemeteries. Grant-funded work must meet the U.S. Secretary of Interior's standards for historic preservation, and matching grants may be made on a competitive basis for (1) stabilizing historic gravestones and markers and historic retaining walls and fences; (2) repairing historic landscapes (e.g., removal of trees and roots); and (3) securing historic burial grounds (such as lighting and fencing).

**Deduction from Appraised Value of Amenities** (H. 3240, Rep. Richardson). This bill lists a requirement by which an assessor must abide in assessing the value of association-owned amenities of a planned-unit residential development which consists of individual lots of real property in which (1) lot ownership requires membership in the association holding title to the amenities, and (2) the amenities are for exclusive use of the residents and their guests. In assessing such amenities, the assessor must impute (i.e., ascribe) the fair



Legislative Update, January 17, 1995

market value of each lot attributable to the value of the access to the amenities based on comparable sales without such access, with the total amount imputed for each lot deducted from the appraised value of the amenities.

**Without Reference**

School for the Deaf and Blind also to Admit Persons Who Are Hard of Hearing and Visually Impaired (H. 3214, Rep. D. Smith). This bill expands the category of persons eligible for services at the School for the Deaf and the Blind to include persons who are hard of hearing or visually impaired (currently, one must be deaf or blind to be eligible for these services).

Total copies 550  
Total cost \$ 946.00  
Cost per copy \$ 1.72  
Date 1-17-95  
S. C. Legislative Council